

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

1	UNITED STATES OF AMERICA,	)	Case No. CR-11-6001-1
2		)	CR-11-6001-2
3	Plaintiff,	)	CR-11-6001-3
4		)	CR-11-6001-4
5	vs.	)	CR-11-6001-5
6		)	CR-11-6001-6
7	LYNN J. OLSEN, II (1),	)	CR-11-6001-7
8	MARK G. PETERSON (2),	)	CR-11-6001-8
9	BLAKE T. BENNETT (3),	)	
10	JEFFREY J. GORDON (4),	)	May 16, 2013
	OLSEN AG, INC. (5),	)	Richland, Washington
	POCO, LLC (6),	)	
	TRI-CITIES PRODUCE (7),	)	Jury Trial - Day 23
	FRED F. ACKERMAN (8),	)	
		)	
	Defendants.	)	

BEFORE THE HONORABLE EDWARD F. SHEA  
SENIOR UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

13	For the Plaintiff:	Mr. Tyler H. L. Tornabene
14		U.S. Attorney's Office
15		920 West Riverside, Suite 340
16		P.O. Box 1494
17		Spokane, Washington 99210
18		Mr. Shawn N. Anderson
19		U.S. Attorney's Office
20		402 East Yakima Avenue
21		Suite 210
22		Yakima, Washington 98901
23	For the Defendants:	
24	Olsen and Olsen Ag:	Mr. Allen R. Bentley
25		Attorney at Law
		1111 Third Avenue
		Suite 2200
		Seattle, Washington 98101
	Peterson:	Mr. Irwin H. Schwartz
		Attorney at Law
		710 Cherry Street
		Seattle, Washington 98104

## 1 APPEARANCES (continued):

2 Bennett and Tri-City                      Mr. Mark E. Vovos  
3 Produce:                                      Attorney at Law  
4    West 1309 Dean  
5    Suite 100  
6    Spokane, Washington 99201

7 Gordon:                                        Mr. Richard A. Smith  
8    Attorney at Law  
9    314 North Second Street  
10     Yakima, Washington 98901

11 Poco, LLC:                                    Mr. R. Bruce Johnston  
12    Attorney at Law  
13    200 Winslow Way West  
14    Suite 300  
15    Bainbridge Island, WA 98110

16 Ackerman:                                    Mr. Nicholas W. Marchi  
17    Attorney at Law  
18    7502 West Deschutes Place  
19    Kennewick, Washington 99336

20 Official Court Reporter:                  Ronelle F. Corbey, #2968  
21    United States District Courthouse  
22    P.O. Box 700  
23    Spokane, Washington 99210  
24    (509) 458-5283

25 Proceedings reported by mechanical stenography; transcript  
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1 (Court convened on May 16, 2013, at 8:36 a.m.)

2 THE COURTROOM DEPUTY: All rise.

3 (Call to Order of the Court)

4 THE COURT: Good morning. Please, be seated.

5 Mr. Tornabene, what's on your mind?

6 MR. TORNABENE: Your Honor, last night we received  
7 from Mr. Bentley, as did the Court, I believe, the trial  
8 memorandum regarding the anticipated testimony of Mr. Schultz.  
9 And I've just conferred with Mr. Bentley regarding that. And it  
10 appears that Mr. Bentley has narrowed down the focus in terms of  
11 which exhibits would be offered based -- from before.

12 That said, after conferring with Mr. Bentley, there are  
13 still a few exhibits that he proposes to offer that we do have  
14 objections to. And I'll just go through those fairly quickly.  
15 Proposed Exhibit 1045 --

16 THE COURT: He hasn't -- okay. 1045? It's in a  
17 parenthetical?

18 MR. TORNABENE: Yes, on Page 5, yes.

19 THE COURT: Is that Harper?

20 MR. TORNABENE: Correct. This is, I believe, 113  
21 pages of Harper analysis regarding onion prices and onion  
22 valuations. So we object in terms of, one, relevance here; but,  
23 also, just in terms of getting into the settlement issues and  
24 discussions that were going on. I believe that contravenes this  
25 Court's order.

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1 THE COURT: Well, let's share microphones so we can  
2 make good use of our time. Mr. Bentley, I invite you to the  
3 podium and the use of the second microphone. 145 -- or 1045?

4 MR. BENTLEY: I've tried to be judicious, your Honor.  
5 There were four or five reports by Mr. Harper. I've only  
6 selected one of them. And I believe that a similar report that  
7 was 600 or so pages long was admitted on request of Poco, again,  
8 involving Mr. Harper. The point is to show how --

9 THE COURT: Well, I haven't admitted any 600-page  
10 exhibit that I can recall. There were 600-page exhibits that  
11 were marked and only 6 or 7 pages were actually used, as I  
12 recall. Ms. Brasel?

13 THE COURTROOM DEPUTY: Yes, Judge. The 600-page  
14 document was 3070, I believe.

15 THE COURT: All right.

16 MR. BENTLEY: That would have been a Bennett document.

17 MR. VOVOS: Yes.

18 THE COURT: Right.

19 MR. BENTLEY: I think there was testimony by  
20 Mr. Masters about Harper -- a Harper report. But, if the Court  
21 feels that the issue is the length of this document, which is  
22 not unmanageable but 140 some pages, I would be prepared to  
23 limit it to the -- I think there's a cover letter that went with  
24 it.

25 THE COURT: Mr. Tornabene?

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1 MR. TORNABENE: The -- if -- I have on the screen what  
2 I believe we're discussing from the JERS that Mr. Bentley  
3 provided. So, if I'm -- if I understand, his position --

4 THE COURT: Let me say that I had thought that my  
5 directions were clear; but I think it, on a case by -- or  
6 exhibit-by-exhibit basis, I'm happy to take these up. And I  
7 think I understand your position on this matter. And my -- and  
8 my guidance on this is still the same. You can get into the  
9 facts, but you're not getting into all the details. We're not  
10 having a side -- to me, it's a 403 issue. It's distracting and  
11 gets us into a whole issue about what Mr. Harper said in every  
12 respect and what was responded to and what the negotiations were  
13 when, indeed, the relevant fact is that there was a serious  
14 dispute between these parties. And, to the extent that it  
15 involves onions rather than potatoes and the refusal was on the  
16 basis of certain crops rather than potatoes leading to certain  
17 inferences that you think are helpful to you, I get it but not  
18 113 pages. So 1045 is out. What's next?

19 MR. TORNABENE: Your Honor, Proposed 1047 and 1111.  
20 These are both appeals' determinations by various courts that  
21 contain findings of fact and would request that those be  
22 excluded based on your Honor's order.

23 THE COURT: Mr. Bentley?

24 MR. BENTLEY: Well, these are findings of fact that go  
25 against my client. So I don't understand the problem that the

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1 Government has with them. I'm -- I'm simply offering them to  
2 create a full picture of what went on during the litigation over  
3 the '01 and '02 claims.

4 THE COURT: They're not admitted. What else?

5 MR. TORNABENE: Similarly, your Honor, Proposed 1310.  
6 This is the order from Judge Van Sickle in the declaration  
7 action, which also contains -- it's not like a one-page order.  
8 It's several pages, contains background, et cetera.

9 THE COURT: I don't know where we are. I'm not  
10 certain that I see that.

11 MR. BENTLEY: It's on Page 6, your Honor.

12 THE COURT: Page 6. Okay.

13 MR. BENTLEY: Bottom.

14 THE COURT: Bottom. Thank you. There we are.  
15 Thanks. Here's how I read the case law. And I've read it, I  
16 think, several times because there have been several motions  
17 occurring. And my view has always been that it depends on what  
18 was essentially at issue. And, my recollection is, that the key  
19 case, that an individual who was in -- allegedly engaging in  
20 fraud filed a lawsuit to enforce his rights. And, the Court,  
21 essentially, in that case, made any number of findings that were  
22 highly disfavorable to that claimant who was then involved --  
23 later involved, I think, in a criminal matter. And the question  
24 became what use could be made of that? And it depends on the  
25 context in a criminal case, as I recall.

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1        So that's my recollection. And I can't think of the case's  
2 name, but I think counsel probably recall it. So that was  
3 really the reason that I -- I decided to permit the kind of  
4 factual recitation and the dynamic that was in play because it  
5 seemed to me clear, unless the jury had a true sense of the  
6 dynamic of the growers and the insurance companies, it couldn't  
7 appreciate the true nature of their behavior. Either it was  
8 consistent with or inconsistent with an alleged fraud. And, so,  
9 to that extent, yes.

10        Now, the -- so that's the general principle that guides me  
11 in these matters. So, when it comes to a decision setting out  
12 the rulings of another judge, you have to persuade me that  
13 something consistent with that case, which I can't cite to you  
14 off the top of my head, that makes that admissible. It wasn't  
15 really -- it was a very odd opinion because it was the context  
16 in which it came up and whether it could be used for impeachment  
17 and, if so, as I recall.

18        But, that said, my general rule is this is not coming in  
19 unless you can persuade me that that case applies and that these  
20 findings somehow have to come in. So -- excuse me, the -- the  
21 order from Judge Van Sickle. The fact of it? Yes. The fact  
22 that it was -- that it was -- that the issue of processor was  
23 referred to an arbitrator or a mediator and what happened after  
24 that, fine. You can get that in, but you're not getting the  
25 order in.

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1 That takes care of 1031 (sic). What's next?

2 MR. BENTLEY: I believe that was 1310.

3 THE COURT: I apologize. 1310.

4 MR. TORNABENE: Your Honor, 1311 is a letter from  
5 Mr. Schultz to Mr. Raekes involving settlement discussions.

6 There's a rhetorical question there as to whether or not  
7 Mr. Raekes's clients had read the insurance policy.

8 Essentially, the settlement-discussion-type --

9 THE COURT: I've read the letters. This is typical  
10 lawyer-to-lawyer negotiation stuff. I mean, nothing unusual  
11 about this sort of approach; but it simply gets us off onto  
12 different subjects about the kind of behavior lawyers engage in.  
13 And, then, we're going to have to talk about strategies and what  
14 the point was because sometimes lawyers write letters that  
15 they -- they actually don't mean. And they say things that they  
16 really don't think the other side is going to buy, but they have  
17 to say them for the client. There's any number of psychological  
18 reasons why people write letters in negotiations. So they're  
19 not in.

20 The fact of them -- the fact of them, yes. But they --  
21 they disagreed, that they corresponded, that they eventually  
22 reached a settlement, fine. All of that gets in.

23 MR. TORNABENE: And, your Honor, finally, as to  
24 Mr. Bentley's proffer -- written proffer, 1314 is a mutual  
25 release. Again, we don't have any problem with the fact of



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1 settlement, the fact of the amount. But 1314 we would request  
2 be excluded.

3 THE COURT: Mr. Bentley?

4 MR. BENTLEY: I believe it's -- it's relevant. This  
5 is -- this check is, if I'm not mistaken, an overt act in the  
6 conspiracy. And in the -- in its decision on the mail fraud  
7 count, Count 11, the Court referred to the fact that that check,  
8 which was a check to Poco, resulted from settlement negotiations  
9 in which there was a release, I believe. And there was  
10 testimony about that. I think this is the same general area  
11 we're trying to prove the good faith of Mr. Olsen and the lack  
12 of a conspiracy.

13 THE COURT: I'll have to take a look at 1314.  
14 Releases are filled with paragraphs. And my guidance here is  
15 always how much mischief can occur as a result of a -- of a two  
16 or three or four or five-page document that sets out myriad  
17 typical terms in a release and what will a jury make of those  
18 and do I have somebody in the jury that will mismanage the jury  
19 deliberations based on that person's prior undisclosed because  
20 unasked experience with negotiations. So I'm leery of putting  
21 in those documents for that reason. I think they have the  
22 potential to do -- to have unintended consequences.

23 So the fact of it? Yes. I'll read it. You can show it to  
24 me, and I'll decide that later. But let's get started. Okay.  
25 I hope that's enough. Is that -- is there something more we

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1 need to do before Mr. Schultz takes the stand?

2 MR. TORNABENE: Well, your Honor, I guess the answer  
3 is, it depends. It depends on the order of presentation. If  
4 Mr. Bentley is going first, then that will probably take us  
5 through to another break.

6 We were also provided a listing by Mr. Johnston regarding  
7 the Poco aspect of Mr. Schultz's representation. That includes  
8 a number of objectionable --

9 THE COURT: So, do you have a number of objections?  
10 Well, you may need to call another witness. You may simply have  
11 to take somebody out of order because, when we -- when we met  
12 last night, folks, nobody said we're going to need an hour or  
13 45 minutes in the morning to take this up. And I'm not going to  
14 have the jury waiting. I told you that before, and I'm sticking  
15 to that.

16 MR. JOHNSTON: And, your Honor, just -- I may have  
17 missed an email; but I did not receive any objections to the  
18 exhibits that we had offered. And they were somewhat pared  
19 down. I will tell the Court that we had offered, as 2080, the  
20 same January 20th letter; and we will abide by the Court's  
21 letter on the duplicate.

22 THE COURT: I have Mr. Bentley's, and I have the  
23 United States'. And my impression was -- let me just take a  
24 quick look. Let's see if I can -- I've read yours,  
25 Mr. Johnston. I may have missed something. I have 1174, 75,

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1 and 76. Those are the ECFs I picked up and read.

2 MR. JOHNSTON: Your Honor, I was simply speaking to  
3 our notification of the exhibits; and I've received no objection  
4 to those.

5 THE COURTROOM DEPUTY: Must have been an email that  
6 wasn't filed.

7 THE COURT: I'm sorry?

8 THE COURTROOM DEPUTY: It must have been an email that  
9 they received. It wasn't a document filed.

10 THE COURT: Okay. So I haven't read them. I don't  
11 even know what you're talking about.

12 MR. TORNABENE: Right --

13 THE COURT: I haven't seen any documents from you  
14 saying, "Here's my problems, and here they are."

15 MR. TORNABENE: Per the procedure that was used in our  
16 case in chief, the Defense provided us an email --

17 THE COURT: Okay.

18 MR. TORNABENE: -- albeit a little bit late but that's  
19 fine, we're all busy -- from Mr. Johnston. And a number of  
20 those exhibits appear to -- for instance, there'd be a trial  
21 brief by Mr. Schultz that's directly contravening this Court's  
22 order. So we're here to make those objections in the same  
23 manner that they did in our case.

24 THE COURT: Call another witness because the jury's  
25 coming in fairly soon. And, then, were going to have to spend --

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1 MR. JOHNSTON: You know what --

2 THE COURT: -- and I'm going to send them out for two  
3 hours at lunch, and we'll take it up that the time.

4 MR. JOHNSTON: Your Honor, I think can clarify. I  
5 listed documents that I may use only to refresh the witness's  
6 memory. And I've offered and -- and I'm not going to offer or  
7 present any documents inconsistent with the Court's order, is  
8 our view and that we have not done so. I've pared it down to  
9 that.

10 THE COURT: That sounds familiar with me. Did you  
11 copy us in on that?

12 MR. JOHNSTON: I -- I did, your Honor.

13 THE COURT: I think -- did you forward that to me?

14 LAW CLERK: I did.

15 THE COURT: Okay. Well, then, I did see it because  
16 Ms. Hartliep did forward it to me; and I did read it. So I have  
17 a sense of those exhibits. And, if they're only used to  
18 refresh, I don't know what your problem is.

19 MR. TORNABENE: That -- that's correct, your Honor.  
20 There are --

21 THE COURT: What's your problem if they're only used  
22 to refresh?

23 MR. TORNABENE: I do not have a problem if there's not  
24 testimony regarding the content of the arguments within. That's  
25 fine. With -- there are other exhibits that have been provided

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1 that we do have an objection to -- three, in particular, by  
2 Mr. Johnston -- and those include 2136, the February '05 Poco  
3 demand -- Poco amended demand, and the 2135, the Poco demand for  
4 arbitration, as well as 2065, the November, 2005, settlement  
5 agreement for crop year 2003, containing a mutual release.  
6 Those are our three remaining --

7 THE COURT: Yeah. I don't see how we get to  
8 Mr. Schultz this morning given the nature of your objections and  
9 your determination to argue these points. If you're determined  
10 to argue these points and it requires the kind of time that  
11 we've been giving all the way along, then I'm happy to give you  
12 that time. So you tell me what you want to do, but we're not  
13 going to be holding the jury for another 45 minutes. How do you  
14 want to proceed?

15 MR. TORNABENE: Your Honor, if I may suggest -- and  
16 just briefly conferring with Mr. Bentley here -- it sounds like  
17 Mr. Bentley may be the attorney who's starting with Mr. Schultz.  
18 We've handled those issues with regards to that direct. I think  
19 that sounds like that would get us through to a break at which  
20 point we really only have three exhibits to discuss before we  
21 take up Mr. Johnston.

22 THE COURT: That's acceptable. Is that how you want  
23 to proceed?

24 MR. BENTLEY: Yes, your Honor.

25 THE COURT: Okay. That's fine. Okay. Bring in the

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1 jury, please.

2 (Jury in at 8:52 a.m.)

3 THE COURT: Good morning to you all. Please, be  
4 seated. I understand -- let's see, Juror No. 9, you have a  
5 dental appointment tomorrow?

6 JUROR NO. 9: Yes, at 7:00 in the morning.

7 THE COURT: Okay. I know you've been struggling a bit  
8 with that tooth so let us know. We'll accommodate what you  
9 need. And, if you're not here at 8:30, we'll just wait for you.

10 JUROR NO. 9: Okay. Thank you.

11 THE COURT: All right, folks. Let's get started.

12 MR. BENTLEY: Defense calls John Schultz.

13 THE COURT: Mr. Schultz, if you'll come up to your  
14 right and to my left, Mr. Schultz, and put your back to the  
15 door, we're going to take your photograph for use by the jury  
16 during deliberations. Thank you.

17 (Courtroom Deputy takes picture of the witness)

18 THE COURT: Good morning.

19 (JOHN SCHULTZ, called by the Defendant, Lynn J. Olsen II,  
20 was sworn)

21 THE COURT: Good morning. Please be seated. And,  
22 when you're comfortable, please tell us your first and last name  
23 and spell them both for the jury.

24 THE WITNESS: My first name is John, J O H N. Last  
25 name Schultz, S C H U L T Z.

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1 THE COURT: Good morning, Mr. Schultz. Okay,  
2 Mr. Bentley, you may proceed.

3

4 DIRECT EXAMINATION

5 DIRECT BY MR. BENTLEY:

6 Q Good morning, Mr. Schultz.

7 A Good morning.

8 Q How are you employed?

9 A I'm in private practice of law.

10 Q How long have you been in practice of law?

11 A I passed the bar 50 years ago. I spent one year as a  
12 clerk, and I've been here for 49 years.

13 Q And where is your practice located?

14 A In -- it's been in Kennewick since 1994. It was in Pasco  
15 for 30 years before that.

16 Q Do you practice as a solo or in a firm?

17 A I'm in a firm. Leavy, Schultz, Davis, and Fearing is the  
18 name of the firm.

19 Q Do you know my client, Lynn J. Olsen II?

20 A I do.

21 Q And how do you know Mr. Olsen?

22 A He has been a client of mine.

23 Q Do you recall when Mr. Olsen first became a client of  
24 yours?

25 A No. Ten years ago. Maybe more.

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1 Q Do you recall the nature of the legal matter that lead  
2 Mr. Olsen to seek your services for the first time?

3 A I believe the first time was this AGR claim; but, I think,  
4 if I've done something else for him, I don't remember it.

5 Q And, when you refer to the "AGR claim," can you tell us a  
6 little more about the background of that matter?

7 A Well, he had reached a dispute with American Growers over  
8 payment of an insurance claim, or the AGR claim, and came to me.  
9 At that time, these policies were brand new; and we hadn't  
10 had -- nobody had had any experience with them. But I've been  
11 involved in the insurance business, defending and prosecuting  
12 insurance claims, for my entire practice; and that's probably  
13 what lead him to me, in addition to the fact I had considerable  
14 agricultural background as a lawyer.

15 Q When Mr. Olsen came to you, is it your recollection that  
16 the Growers -- American Growers had rejected his claims?

17 A That's my recollection. They had rejected his claims, and  
18 the next step was to demand arbitration under that policy.

19 Q Did Mr. Olsen provide you with the written notification of  
20 the rejection of his claims?

21 A He did.

22 Q I'd like to show you -- this is just -- not to the jury --  
23 what has previously been marked as Exhibit 1033.

24 A Are they in these books in front of me?

25 Q They are.



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1 MR. BENTLEY: If I may, your Honor.

2 THE COURT: Go ahead.

3 MR. BENTLEY: I've left books.

4 THE COURT: I saw that.

5 MR. BENTLEY: I hope that's okay.

6 THE COURT: It certainly is. If you're not going to  
7 use the ELMO, that's fine.

8 MR. BENTLEY: Well, I will be using the ELMO. So,  
9 let's -- but there will be some documents that I want to show  
10 him to refresh his recollection, and I thought we could do that  
11 with the hard copies.

12 THE WITNESS: Yes, that's the letter. That is one of  
13 the letters.

14 MR. BENTLEY: All right. I offer Exhibit 1033.

15 MR. TORNABENE: No objection.

16 MR. BENTLEY: Okay. May it be published?

17 THE COURT: 1033 is admitted and may be published to  
18 the jury.

19 (Exhibit No. 1033 admitted into evidence)

20 Q (BY MR. BENTLEY) And the date on this, Mr. Schultz?

21 A December 19, 2003.

22 Q And, so, it would be sometime after that when Mr. Olsen  
23 approached you for representation. Is that correct?

24 A I assume so. Yeah.

25 Q And --

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1 A I might have known him before that.

2 Q Okay.

3 A But --

4 Q Does this letter explain why American Growers is rejecting  
5 the '01 AGR claim of Mr. Olsen?

6 A It does.

7 Q Can you summarize for us the reasons?

8 A I'm not so sure I could summarize very well on this policy;  
9 but, basically, it went into crop history and claimed that the  
10 crop history was not sufficient. As I'm sure the jury's figured  
11 out by now, adjusting these AGR claims is a very complicated  
12 process.

13 Q The insurance company has the authority to revise a crop  
14 report submitted by a grower. Correct?

15 A Unlike almost any other insurance in the world, yeah. They  
16 go back -- once the claim is made, they go back to the very  
17 beginning and start to see should they have accepted the risk.

18 Q So, here they are --

19 (Interruption by the Court Reporter)

20 THE WITNESS: Yeah and should the risk be paid or  
21 should there be any payment.

22 Q (BY MR. BENTLEY) And, so, here they're revising under that  
23 general authority that they have. Correct?

24 A Yes, which is -- these policies are reinsured by the U.S.  
25 Government.

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1 Q And, in particular, looking at Page 2 of this letter, are  
2 they revising his onion acres?

3 A Yes.

4 Q And they're reducing his expected value for his onion crop.  
5 Is that correct?

6 A Yes.

7 Q And would you read, for the record, the highlighted  
8 sentence at the bottom of Page 2 and at the top of Page 3?

9 A "Based on the total" -- "Based on the revised total  
10 commodity values, the coverage level and payment rate for which  
11 you are eligible are limited to 65 percent coverage and  
12 75 percent payment rate. As a result of the revisions to your  
13 approved AGR, coverage level and payment rate, your 2001 AGR  
14 premium will be adjusted accordingly."

15 THE COURT: Mr. Schultz, do me a favor and bring that  
16 mic just a little bit closer to you so we can hear you in the  
17 overhead speakers.

18 THE WITNESS: Yeah. I'll move just a little bit  
19 closer to it. Thank you.

20 THE COURT: Thank you. Mr. Bentley.

21 Q (BY MR. BENTLEY) And, finally, on Page 4, what is the  
22 insurance company asking for here?

23 A Net overpayment due to them --

24 THE COURT: Is that microphone on, Mr. Schultz?

25 THE COURTROOM DEPUTY: Green light should be on.

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1 THE COURT: The green light should be on.

2 THE WITNESS: There you go.

3 THE COURT: There we are.

4 THE WITNESS: \$479,713.

5 Q (BY MR. BENTLEY) So, they want Mr. Olsen to refund that  
6 amount to them. Correct?

7 A Yes.

8 Q And you mentioned arbitration. Do you see a reference to  
9 that toward the end of the letter?

10 A Yes. It says to review the AAA rules and file arbitration  
11 with the American Arbitration Association.

12 Q And do they also indicate that they've had assistance from  
13 the RMA in their review?

14 A That's the history of all of these policies. The RMA  
15 supervises them.

16 Q And they also say, in that highlighted sentence, that they  
17 did so "in light of the State of Rehabilitation of American  
18 Growers." What does that -- or what did that mean to you?

19 A Well, apparently, American Growers insured a lot of these  
20 risks without reinsuring them with the Government, which was a  
21 bad decision; and they went broke.

22 MR. TORNABENE: I'm going to object based on  
23 foundation and --

24 THE COURT: Sustained.

25 MR. TORNABENE: -- would ask that be stricken, your

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1 Honor.

2 THE COURT: Stricken.

3 Q (BY MR. BENTLEY) Now, the letter that we just looked at,  
4 Mr. Schultz, was concerned with the 2001 AGR underwriting and  
5 claim review. Correct?

6 A Yes.

7 Q And Mr. Olsen and the insurance company also had a dispute  
8 about Mr. Olsen's '02 AGR claim. Is that correct?

9 A Yes.

10 Q I'd like to show you --

11 MR. BENTLEY: Not for the jury.

12 Q (BY MR. BENTLEY) -- what has previously been marked as  
13 Exhibit 1102 and ask if you can identify that exhibit.

14 A Yes. That's another letter that was on the 2002 policy.

15 MR. BENTLEY: I'm going to offer 1102.

16 MR. TORNABENE: No objection.

17 THE COURT: Admitted.

18 (Exhibit No. 1102 admitted into evidence)

19 MR. BENTLEY: May this be published to the jury?

20 THE COURT: It may.

21 Q (BY MR. BENTLEY) And the date on this letter, Mr. Olsen  
22 (sic) -- or Mr. Schultz?

23 A January 8, 2004.

24 Q Who is that addressed to?

25 A Debbie Moore.

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1 Q What is your understanding of her role at Olsen Ag,  
2 Incorporated?

3 A She was somewhat the office manager. She -- she ran the  
4 office, got all the records. She was the go-to. I'd known her  
5 for a long time from one of her former employers. At that  
6 point, she worked with Olsen Ag.

7 Q Now, they're indicating in this letter they have completed  
8 the insurance company's review of the '02 claim. Correct?

9 A Yes.

10 Q And they're pointing out certain obligations of the  
11 insured, such as, reporting accurately all insurable commodities  
12 expected to be produced and any planned operational changes.  
13 Correct?

14 A Yes.

15 Q And they have been underwriting -- doing an underwriting  
16 review, and what did they find?

17 A They identified a difference in acreage between what was  
18 reported under the AGR contract year and the 2002 Multi-Peril  
19 Crop Insurance Acreage Report.

20 Q Were those differences with regard to a particular  
21 commodity?

22 A Onions and potatoes.

23 Q Two commodities. Correct?

24 A Yes.

25 Q In going on to Page 2, would you read the first sentence of

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1 the second paragraph on this -- that's on the screen.

2 A "Based on this, we have no choice but to deny coverage on  
3 your 2002 AGR policy and deny the claim for indemnity that was  
4 filed."

5 Q And, further down on the page, do we see language that's  
6 similar to what was in the other letter concerning involvement  
7 of RMA?

8 A "RMA personnel ... are intimately familiar with the  
9 workings of the AGR program performed this review in light of  
10 the State of Rehabilitation of American Growers."

11 Q And they are informing you of a procedural right that Olsen  
12 Ag would have. Correct?

13 A Sure, to file arbitration with the American Arbitration  
14 Association.

15 Q Did you file for arbitration with the American Arbitration  
16 Association?

17 A I did after some discussion with the attorney for American  
18 Growers.

19 Q And, approximately, when did you file?

20 A I don't remember. I saw an exhibit that you have the exact  
21 arbitration demand.

22 Q 1037, you have it, if that would refresh your recollection.

23 A That would and appears to be dated June 25, 2004.

24 Q Was that a demand with respect to both of the years in  
25 question?

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1 A Yes, it was.

2 Q And, in the ordinary course when the American Arbitration  
3 Association receives a demand, what do they do?

4 A Well, the first thing they do is appoint an arbitrator;  
5 and, then, they begin a schedule not unlike what happens in a  
6 regular court proceeding. There'll be a schedule for the  
7 hearing. First, whatever discovery's going to be done. What --  
8 you know -- and, then, a time for --

9 Q What are the advantages of arbitration over a court  
10 hearing, then?

11 A Well, there's considerable advantages because they are  
12 usually done faster and the results are final. There aren't  
13 appeals. There's no appeal from an arbitration award. It's  
14 binding between the parties.

15 The disadvantage is it's a little expensive. The AAA is  
16 expensive, but --

17 Q When the arbitrator is appointed, does he or she set up a  
18 schedule as you testified?

19 A Yes. Yes.

20 Q And, at the end of a series of deadlines, they have a date  
21 or dates for the actual arbitration. Is that correct?

22 A That's true.

23 Q And when were the -- was the arbitration scheduled for, if  
24 you recall?

25 A I can't recall, but it would have been some months later.



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1 And, in the meantime, the company filed bankruptcy, I believe.

2 Q All right. Well, let's take a look at Exhibit 1040 and see  
3 if that refreshes your recollection with respect to the schedule  
4 in this matter.

5 A Well, this is a letter to the RMA.

6 Q If you look at the second paragraph of the letter, I'd ask  
7 if that would refresh your recollection.

8 A Yes. Arbitration was scheduled for between August 22 to  
9 September 7, 2005. And that was -- that was notifying the RMA  
10 that they needed to become involved.

11 Q Why was it necessary to notify the RMA of the arbitration?

12 A I don't know that it was necessary, but I wanted them to be  
13 notified anyway because they took over for American Growers and,  
14 therefore, stood in American Growers' shoes. At least that was  
15 the position we took at that time.

16 Q And did RMA respond to the invitation to participate in the  
17 arbitration?

18 A They said they did not have to participate. They wanted us  
19 to -- any dispute would have to go before a brother agency. The  
20 NAD, or National Appellate Division, of the USDA.

21 Q After RMA declined to be involved in the arbitration, what  
22 did you do?

23 A Well, we had an argument with the arbitrators. And there  
24 were -- this is only one of the cases that I was handling at  
25 that time, and we had arguments before two different

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1 arbitrators. And the USDA was involved. The USDA claimed they  
2 didn't have to participate. And the arbitrators, in two  
3 different situations, ruled that, yes, they did. That was the  
4 right that these insureds had under the policy, which was  
5 reinsured by the FCIC. And, therefore, under our policy, we had  
6 a right to go to an independent tribunal, which was the AAA.  
7 And that's what both arbitrators ruled. I think correctly so  
8 although later --

9 MR. TORNABENE: Objection as to his opinion as to --

10 THE COURT: Sustained.

11 MR. TORNABENE: And would move to strike.

12 THE COURT: Well, it's sustained. The jury can sort  
13 out what's opinion and what I've sustained and what wasn't. Go  
14 ahead.

15 Q (BY MR. BENTLEY) When RMA wrote you to decline the  
16 invitation to participate in the arbitration, did they offer you  
17 an alternative?

18 A I'm not sure they did at the start, but they certainly did  
19 through the appellate procedures of the National Appellate  
20 Division of the United States Department of Agriculture.

21 Q And the Appellate Division -- the appellate procedures came  
22 after an administrative review by USDA?

23 A I think it did.

24 Q And was that a procedure that you followed for Olsen?

25 A Yes.

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1 Q And, by the way, you mentioned some other arbitrations  
2 involving other parties. They didn't involve Olsen. Correct?

3 A No.

4 Q This is only -- the only one that you were involved in for  
5 Mr. Olsen.

6 A Yes.

7 Q Okay.

8 A But Olsen wasn't the only farmer involved in the same  
9 pickle when American Growers --

10 MR. TORNABENE: Objection regarding testimony about  
11 any other farmers not part of this case.

12 THE COURT: Sustained.

13 Q (BY MR. BENTLEY) During the administrative review  
14 conducted by the RMA of Mr. Olsen's and Olsen Ag's claims, did  
15 you provide information in support of the information that  
16 Mr. Olsen had provided in his Annual Farm Report or reports?

17 A Yes.

18 Q Tell us about that.

19 A Well, I provided everything that we had provided to the  
20 arbitrators and the arbitration decision, reports from experts,  
21 and everything analyzing his loss under the policy.

22 Q And what -- who was the principle expert that you relied  
23 on?

24 A Dan Harper.

25 Q And what was the focus of his analysis?

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1 A Well, to go through the crop history and the Schedule F on  
2 the -- on the tax returns, crop history to determine what  
3 amounts are payable under the policy. And that's what he did.

4 Q And did he look at onion prices historically, as well?

5 A Yes.

6 Q And how many submissions did Mr. Harper make to the USDA,  
7 if you recall?

8 A I don't, but they were voluminous. And he, I think -- I'm  
9 not sure. He may have had direct communication with them and  
10 through me, also, attempting to comply with all the rules and  
11 regulations of the -- the handbook, if you've seen the  
12 settlement handbook for these claims.

13 Q So, just so that we're clear on this, you're sort of moving  
14 down two tracks at the same time.

15 A Yes.

16 Q Correct.

17 A I was.

18 Q You're getting ready for arbitration on this track, and  
19 you're complying with what RMA says is the proper procedure with  
20 the administrative review. Correct?

21 A I was, basically, afraid to put all my eggs in one basket  
22 because --

23 Q Yeah. All right. And, ultimately, RMA made a decision on  
24 the administrative review they had been conducting. Correct?

25 A Yes, they did.

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1 Q Do you recall the date of that decision?

2 A No, but I'm sure you have it.

3 Q I'd like to show you two letters.

4 MR. BENTLEY: Not for the jury.

5 THE WITNESS: April 5, 2007.

6 MR. BENTLEY: I'm showing the witness Exhibit 1046,  
7 and I'm offering that exhibit at this time.

8 THE WITNESS: This is the one from Cliff Parker.

9 MR. BENTLEY: Correct.

10 THE WITNESS: Okay.

11 MR. TORNABENE: No objection.

12 THE COURT: Admitted.

13 (Exhibit No. 1046 admitted into evidence)

14 MR. BENTLEY: May it be published, please?

15 THE COURT: It may be published.

16 Q (BY MR. BENTLEY) In the first paragraph, do they -- does  
17 Mr. Parker, the author of this letter, summarize the conclusion  
18 that the agency has reached based on its review of Mr. Olsen's  
19 '01 claim?

20 A Yes. They claimed it did not trigger a loss under the 2001  
21 Adjusted Gross Revenue Pilot Insurance Policy and that he was  
22 overpaid.

23 Q Now, American Growers wanted him to pay back, what, some --

24 A 400 and something.

25 Q -- 480,000?

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1 A Yes.

2 Q So, he's sort of gone backwards. Now they want him to pay  
3 back the whole thing. Correct?

4 A And the arbitrators ruled otherwise. But --

5 Q And that arbitration decision was prior to this letter.

6 A Yes, it was.

7 Q But, as far as RMA was concerned and a judge later ruled,  
8 it didn't matter because RMA couldn't be bound. Correct?

9 A I'm -- yeah. The judge says I can't give you my opinions;  
10 but, yes.

11 Q And I say you can't give us your opinions, also. Right?

12 A Okay. Okay.

13 Q Now, on Page 2 -- withdrawn.

14 This -- this is a 21-page letter, single spaced, is it not?

15 A If you say so. What's the exhibit number, and I'll look at  
16 the pages.

17 Q It's Exhibit 1046.

18 A Yes. It's a 21-page letter.

19 Q So, in this letter, Mr. Parker is providing an analysis of  
20 why Mr. Olsen was not entitled to any indemnity in '01. Is that  
21 right?

22 A Yes.

23 Q And he goes through three different items in the original  
24 Annual Farm Report. Correct?

25 A Yes.

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1 Q On the first one, they've agreed with Olsen that the  
2 revised amount is -- is based on the written records.  
3 Therefore, there's no dispute about the revised Annual Farm  
4 Report. Correct?

5 A Yes.

6 THE COURT: Where are you referring to?

7 THE WITNESS: The letter on Page --

8 THE COURT: No. I meant, if you have a paragraph you  
9 want him to look at, just point it out to him, would you?

10 MR. BENTLEY: Yes.

11 THE COURT: Thank you. And you need to reask that  
12 question.

13 Q (BY MR. BENTLEY) And they also found that they couldn't be  
14 as comfortable with the average allowable expenses. Correct?

15 A Yes.

16 Q On Page 40363, Bates -- the lowest Bates number, they  
17 indicate they have no issue with regard to Olsen's expected  
18 value of potatoes.

19 A Yes.

20 Q Their issue is with the expected value of onions. Correct?

21 A Yes.

22 Q And they say that, at the bottom, \$12 per hundred weight  
23 expected value is completely unreasonable, not consistent with  
24 the standard contained in the AGR handbook.

25 A That was the claim.

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1 THE COURT: What do you mean "claim"?

2 THE WITNESS: That's what they said in the letter.

3 THE COURT: Okay. Thank you.

4 Q (BY MR. BENTLEY) Moving right along, at Page 12 of the  
5 letter, what did they decide with respect to Mr. Olsen's  
6 coverage level?

7 A Because Olsen only qualified with one commodity, the  
8 coverage was reduced to the highest amount of coverage they were  
9 eligible, which was 65 percent at a 75 percent payment rate.

10 Q And, so, they used those numbers, did they not, to  
11 calculate whether Mr. Olsen was entitled to an indemnity.

12 A Yes.

13 Q And this is shown on Page 20 --

14 A Yes.

15 Q -- on the screen now.

16 A Yes.

17 Q Zero indemnity. Correct?

18 A Yes.

19 Q Now I'd like to direct your attention to Exhibit 1109.

20 MR. BENTLEY: Not for the jury.

21 Q (BY MR. BENTLEY) Does this look familiar, Mr. Schultz?

22 A Yes.

23 Q And what is this?

24 A The 2002 claim determination, same process, same drill.

25 MR. BENTLEY: I offer Exhibit 1109 and ask that it be



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1 published to the jury.

2 MR. TORNABENE: No objection.

3 THE COURT: Admitted and may be published.

4 (Exhibit No. 1109 admitted into evidence)

5 Q (BY MR. BENTLEY) And we see here, on the first page,  
6 again, RMA -- RMA's decision that Olsen has not triggered a loss  
7 under the AGR policy. Correct?

8 A Yes.

9 Q That's because they recalculated his guarantee, and he did  
10 not reach the trigger point in terms of the revenue shortfall.  
11 Correct?

12 A That was what they determined.

13 Q This letter, like the one we just looked at, is also rather  
14 long and complicated. Correct?

15 A Yes.

16 Q But the bottom line is here on Page 23 --

17 A Yes.

18 Q -- where they show "Indemnity Amount 0."

19 A Yes.

20 Q Now, this one they found that he qualified for the  
21 90 percent -- 70 percent -- 75 percent rates; but they reduced  
22 his income so that he did not qualify for indemnity?

23 A Yes.

24 Q Okay. Going back -- putting Exhibit 1109 back up on the  
25 screen, did the letters from Mr. Parker, of which this is one,

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1 inform Olsen of procedural rights that he had to challenge the  
2 RMA's determination?

3 A Yes.

4 Q Is that what is shown here on Page 23 where they talk about  
5 three options?

6 A Yes.

7 Q And those are?

8 A Administrative review, mediation, appeal to the National  
9 Appellate Division.

10 Q And, continuing on, they're indicating that Mr. Olsen's  
11 already used his administrative review rights.

12 A Yes.

13 Q What about mediation? Did you mediate this thing? Do you  
14 remember?

15 A I don't think so.

16 Q Okay. And what did you do with regard to the appeal to the  
17 National --

18 A We filed the appeal with the National Appeal Division,  
19 which is not part of the policy. It's a different process.

20 Q Did that appeal lead to a hearing --

21 A Yes.

22 Q -- before a hearing officer?

23 A Yes.

24 Q Where was the hearing held?

25 A Pasco.

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1 Q Who was present?

2 A Well, I was the lawyer for the claimant; and the -- the RMA  
3 didn't bring a lawyer. They had Dave Paul, the -- they  
4 didn't -- this hearing -- the National Appellate Division is  
5 part of the USDA. So --

6 Q How did the -- how did the hearing turn out for Mr. Olsen?

7 A Well, basically, the National Appellate Division rubber  
8 stamped the findings of --

9 MR. TORNABENE: Objection to the --

10 THE COURT: Sustained. Stricken.

11 Q (BY MR. BENTLEY) Did Mr. Olsen prevail in the hearing?

12 A No. They did just exactly what Dave Paul had done at the  
13 beginning.

14 Q And did you seek judicial review --

15 A Yes.

16 Q -- of that decision?

17 A Yes.

18 Q What did you do to seek that review?

19 A Well, I tried to enforce the arbitration awards that we had  
20 received pursuant to the policy and that -- assert that those --  
21 that the decision of the National Appellate Division -- at that  
22 point, if you appeal an administrative decision, the test is  
23 whether it's arbitrary and capricious, which is a heavy burden.

24 Q So, you had -- again, you're still moving down those two  
25 tracks. Correct?

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1 A I was. One under the policy and one that was the  
2 bureaucracy in the USDA.

3 Q You felt that you had a valid award --

4 A I did.

5 Q -- under the arbitrator's decision?

6 A I did.

7 Q And you had lost in the NAD hearing. You were trying to  
8 get the Court to find that was arbitrary and capricious.

9 A Right. I was trying to get them to accept the insurance  
10 policy.

11 Q And you did not prevail on the lawsuit seeking to enforce  
12 the arbitration award. Correct?

13 A No, I did not.

14 Q Did you appeal from that decision?

15 A At that point, we filed a Notice of Appeal; and, then, we  
16 mediated a resolution.

17 THE COURT: Now, why don't you clear up where the  
18 appeal was filed because there's been --

19 THE WITNESS: The appeal --

20 THE COURT: Excuse me a second. The appeal's been  
21 tossed around a good deal, Mr. Bentley. So, why don't you make  
22 sure the jury gets that.

23 Q (BY MR. BENTLEY) Both of your lawsuits -- the one to  
24 enforce the arbitration award and the one to reverse the NAD  
25 hearing decision -- were filed with the United States District

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1 Court for the Eastern District of Washington. Correct?

2 A Yes.

3 Q And, when you are seeking appellate review of a decision of  
4 this Court, where do you go?

5 A The United States Court of Appeals, Ninth Circuit.

6 Q And, filing a Notice of Appeal, what does that involve as  
7 the initial step?

8 A Piece of paper filed and, then, they have a mediation  
9 process, which we followed.

10 Q Do you recall the name of the mediator?

11 A No.

12 Q What was the result of that mediation?

13 THE COURT: Excuse me a second. Would you clear up  
14 who the parties to that particular appeal were so that, when you  
15 get to mediation --

16 MR. BENTLEY: Yes.

17 THE COURT: -- it's set up? Thanks.

18 MR. BENTLEY: That's -- I -- yes.

19 Q (BY MR. BENTLEY) Who were the parties at that -- in that  
20 appeal?

21 A The RMA.

22 Q On the one hand?

23 A And us on the other hand or the farmer on the other hand.

24 Q That did not involve American Growers because they were  
25 kaput.

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1 A They were already defunct.

2 Q And please tell us what the result was as a result of the  
3 mediation of the appeal.

4 A Ultimately, Mr. Olsen agreed to a repayment provision to  
5 repay what the RMA claimed that he shouldn't have received.

6 Q Do you recall the amount?

7 A No, I don't. It was a lot of money though.

8 Q Now, when was that settlement agreement reached?

9 A Oh, several years ago now. Three, four years ago.

10 Q How many years, though, after the decisions -- the --  
11 the -- the Notice of Appeal was filed in the case involving RMA?

12 A It was not too long. The U.S. Government or the -- the  
13 Ninth Circuit Mediation Service got involved, and it wasn't --  
14 it wasn't very long after that that business dictated that the  
15 suit be stopped.

16 Q Could you take a look at Exhibit 1051, please.

17 MR. BENTLEY: This is not for the jury.

18 THE WITNESS: Yes.

19 Q (BY MR. BENTLEY) Is that the written settlement agreement?

20 A Yes, and it was -- I can give you the date of it.

21 Q Yes, please.

22 A Okay. January of 2010.

23 Q Does that refresh your recollection as to the amount of the  
24 settlement?

25 A Yes. One million, two -- let's see. There was --

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1 Q Page 5.

2 A Okay. 1,200,000.

3 Q Now, you've taken us all the way to January, 2010.

4 Correct?

5 A Yes.

6 Q And, at that point on the civil side by this settlement  
7 agreement, is it your view that all of the civil issues related  
8 to the '01 and '02 AGR claims had been resolved?

9 A Yeah. It was a -- all claims were released. It was over.

10 Q Now, here we are in 2010. I'd like to rewind the tape and  
11 go back to 2005.

12 A Okay.

13 Q Do you recall another matter involving Mr. Olsen and an AGR  
14 claim and a different insurance company coming to your  
15 attention?

16 A Yes.

17 Q Tell us about that.

18 A Well, we resolved that claim.

19 Q Well, what -- who sued who in that case?

20 A We sued them.

21 Q Well --

22 A Which -- which --

23 THE COURT: Why don't you lay more of a foundation  
24 here rather than have Mr. Schultz guess and test his memory.  
25 I'm sure he has a good memory, but let's lay a foundation, shall

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1 we?

2 MR. BENTLEY: Yes.

3 Q (BY MR. BENTLEY) Did Mr. Olsen retain you to represent him  
4 in connection with his AGR claim involving Farmers Crop  
5 Insurance Alliance in the -- for the 2004 crop year?

6 A I do have very little recollection of it because it was  
7 resolved, and it was resolved in a rather a timely manner. And  
8 mutual releases were executed, and it was done. And someplace  
9 in here there's a copy of that release.

10 Q All right. Could you take a look at Exhibit 1310 and see  
11 if that refreshes your recollection about the -- the genesis of  
12 the involvement you had with Mr. Olsen's '04 AGR claim.

13 A 1310 is the issue concerning the Court Order. It looks  
14 like a Court Order to me.

15 Q Well, looking at that, do you -- does that reflect a -- an  
16 order filed in a lawsuit in this court?

17 A Yes.

18 Q Who was the plaintiff in that case?

19 A Yeah, the insurance company. That's correct. The  
20 insurance company had filed that declaratory judgment action to  
21 interpret the policy.

22 Q And did that have something to do with whether Tri-Cities  
23 Produce was a processor or not?

24 A Yeah, that was that -- that term isn't defined in any of  
25 the AGR handbooks. It was --



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1 Q No, no. My question is --

2 A Yes.

3 Q -- whether the lawsuit involved that issue.

4 A Yes, yes.

5 Q And did the judge make a ruling as to whether that issue  
6 could be heard by the Court or by an arbitrator?

7 A No. He ruled that the arbitration provisions of the policy  
8 controlled everything. And, so, that policy -- or that had to  
9 be arbitrated; and, then, we settled the case.

10 Q And, in this case, we're dealing with Farmers Crop  
11 Insurance Alliance, not with the RMA. Correct?

12 A Well --

13 Q Or was RMA involved?

14 A I think RMA is involved in every one of these --

15 Q Okay.

16 A -- and supervises all of the claims because, ultimately,  
17 the FCIC pays the claim.

18 Q Do you recall the name of the attorney who represented FCIA  
19 in this declaratory judgment action?

20 A It wasn't Rolf Tangvald? I'm not sure I do. Rolf Tangvald  
21 and I --

22 THE COURT: Well, excuse me just a second. I think,  
23 Mr. Schultz, it's a simple question.

24 THE WITNESS: I don't remember.

25 MR. BENTLEY: Okay. Well, take a look at Exhibit

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1 1311.

2 THE WITNESS: Oh, John -- John Raekes represented the  
3 insurance company.

4 THE COURT: There you go.

5 Q (BY MR. BENTLEY) And did you and Mr. Raekes have some  
6 repartee back and forth over a possible settlement of the case?

7 A Yes.

8 Q Did your discussions lead to a settlement?

9 A Yes.

10 Q And was a settlement agreement signed?

11 A Yes.

12 Q And did FCIA agree to make a payment to Mr. Olsen on his  
13 '04 AGR claim?

14 A Yes.

15 Q Do you recall the amount of the payment?

16 A No, but it was a lot of money. A couple hundred -- a  
17 couple million dollars, wasn't it?

18 Q Take a look at 1314 and see if that refreshes your  
19 recollection.

20 A A million, five.

21 Q And the date of that settlement and release was what?  
22 That's Exhibit 1314.

23 A January of '06.

24 Q So, the -- and I'm not sure that I asked you this. This --  
25 this lawsuit was the insurance company suing Mr. Olsen.

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1 Correct?

2 A Well, for a declare -- yeah. Mr. Olsen had made a claim.

3 Q Okay.

4 A And, then, they brought a declaratory judgment action to  
5 interpret the policy.

6 Q Would you tell the jury what a declaratory judgment action  
7 involves in 60 words or less?

8 A Well, they brought an action asking the Court to interpret  
9 the policy. And the Court said, no, you follow the arbitration  
10 provisions in the policy; and the arbitrator interprets the  
11 policy.

12 Q So, these things are going on simultaneously and not  
13 necessarily being settled in sequence. Would you agree?

14 A Yes.

15 Q And the '04 matter lead to a settlement that you have  
16 described implemented in January of '06.

17 A Yes.

18 Q And the '01 and '02 claims were not resolved on the civil  
19 side until four years later. Correct?

20 A Yes.

21 Q Okay.

22 A We were still trying to collect on that -- on those and,  
23 then, the Government wanted it's money back so --

24 THE COURT: Mr. Schultz -- Mr. Schultz, just that, you  
25 know, if you restrict yourself to answering the question, this

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1 will go more smoothly. Go ahead.

2 MR. BENTLEY: I'm done. No further questions.

3 THE COURT: All right. Mr. Johnston, next.

4 MR. JOHNSTON: Ms. Brasel, may we have the machine.

5

6 CROSS EXAMINATION

7 CROSS BY MR. JOHNSTON:

8 Q Good morning, Mr. Schultz.

9 A Good morning.

10 Q I'm Bruce Johnston, as you know, and represent Poco in  
11 these matters. When did you first become aware of Poco, LLC?

12 A I'm not sure of that either.

13 Q In relationship to time or an event, if you can --

14 A 2003, maybe.

15 Q And was that in connection with an AGR claim?

16 A Yes.

17 Q And had you known Mr. Peterson before that time?

18 A Many years.

19 Q And, in regard to -- let me ask you the same question.

20 MR. JOHNSTON: And if we can have previously admitted  
21 Exhibit 2038?

22 (Discussion off the record)

23 MR. JOHNSTON: Ms. Brasel, I don't think we have the --

24 THE COURTROOM DEPUTY: Um-hum, it's over.

25 Q (BY MR. JOHNSTON) While we're waiting for that,

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1 Mr. Schultz, in regard to the early part of the first claim, who  
2 was it at Poco that you primarily dealt with?

3 A Well, I think Debbie Moore, probably, more than Mark. She  
4 was the one that would -- if I needed anything, she would get it  
5 for me. And, if I needed help gathering information, she would  
6 be the gatherer. I did talk to Mark, but it was -- primarily,  
7 she was the executive officer of the company.

8 THE COURT: Is Mark Peterson?

9 THE WITNESS: Is Debbie Moore.

10 THE COURT: Mark Peterson?

11 THE WITNESS: Yes, Mark Peterson. Yeah.

12 Q (BY MR. JOHNSTON) And, Mr. Schultz, is the document that's  
13 there on the screen that's Exhibit 2038 -- is that the letter  
14 that you understood was the denial of the Poco 2003 claim?

15 A Go to the next page. Is this the one that had the  
16 71 acres? Yes.

17 Q Yes. And, at that point, they were arguing that it wasn't  
18 payable because 71 -- 2 -- 71.2 acres of corn in one of the  
19 counties had not been insured under an MPCCI policy --

20 A I thought it was potatoes, but there was -- yeah, they  
21 didn't have a multi-peril policy, which is required in order to  
22 get an AGR policy. But it was unrelated and it was in a  
23 different county and there were no losses.

24 Q Okay. And did they also assert that there was an MPCCI on a  
25 corn policy?

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1 A I can't recall the planting date. I think there was a  
2 planting date problem, or it wasn't available at the time and --  
3 yes.

4 Q And is that where the insurance is only available if the  
5 corn is planted before --

6 A Yes.

7 Q -- a particular date?

8 A They're date -- date sensitive.

9 Q And, because it was a second crop, this was planted after  
10 the date. So, the MPCCI policy wasn't available?

11 A And, when it's not available, you get AGR coverage anyway.

12 Q Okay.

13 MR. JOHNSTON: And, then, for the Court, Counsel, and  
14 the witness but not for the jury yet, can we see Exhibit 2132?

15 Q (BY MR. JOHNSTON) Well, while we've got 2131 up,  
16 Mr. Schultz, was this an announcement that the insurance company  
17 had changed from Farmers Crop Insurance Alliance to --

18 A Yes.

19 Q -- Northern -- North Central Crop Insurance?

20 A Yeah. Just change of name, but they were still --

21 Q It -- it -- it was a merger so the new company took on all  
22 the obligations of the prior company?

23 A Right.

24 Q Okay.

25 MR. JOHNSTON: We would offer 2131, your Honor.

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1 MR. TORNABENE: No objection.

2 THE COURT: Did you say 21 --

3 MR. JOHNSTON: 31.

4 THE COURT: -- 31? Okay.

5 MR. JOHNSTON: Yes.

6 THE COURT: 2131 in. Admitted.

7 MR. JOHNSTON: And may we --

8 THE COURT: It can be published.

9 (Exhibit No. 2131 admitted into evidence)

10 MR. JOHNSTON: If we could publish that to the jury.

11 THE COURT: Certainly.

12 Q (BY MR. JOHNSTON) And this was just, simply, an  
13 announcement so that you knew who they were --

14 A Yes.

15 Q -- was responsible on the policy?

16 A Yes.

17 Q Okay.

18 MR. JOHNSTON: Then, again, just for the Court,  
19 Counsel, and the witness, may we see 2132?

20 Q (BY MR. JOHNSTON) Did Ms. Moore respond on the 71 acres  
21 prior to your involvement or after your --

22 A I believe she had before.

23 Q Okay. And you received a copy of her response before you  
24 took action in regard --

25 A Yes.

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1 Q -- to the policy?

2 A Yes.

3 Q And is 2132 a document that was sent to Farmers Crop  
4 Insurance Alliance by Ms. Moore and, then, subsequently, also  
5 provided in further proceedings by yourself?

6 A Yes.

7 MR. JOHNSTON: We would offer 2132, your Honor.

8 MR. TORNABENE: No objection.

9 THE COURT: Admitted.

10 (Exhibit No. 2132 admitted into evidence)

11 MR. JOHNSTON: May we display that to the jury --

12 THE COURT: You may display.

13 MR. JOHNSTON: -- and have the second paragraph blown  
14 up.

15 Q (BY MR. JOHNSTON) And, Mr. Schultz, 2038 was dated June 1  
16 of 2004. And this letter was not dated but written shortly  
17 after that time in response. Correct?

18 A Yes.

19 Q Now, this is the explanation of Poco about the 71.2 acres.  
20 Is that correct?

21 A Yes.

22 Q Now, Mr. Schultz, the 71.2 acres compared to the overall,  
23 which was over 1,300 acres of potatoes alone and, then, other  
24 acreage, was fairly insignificant in terms of just the  
25 percentage acres. Correct?



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1 A It was, and there were no losses here either. So --

2 Q And, then, so that the premium that wasn't paid would have  
3 only been a few thousand dollars. Correct?

4 A At most.

5 Q And the claim that you filed, initially, was over \$800,000?

6 A I recollect it was more than that, but --

7 Q We'll get to that; but it was at least that amount, wasn't  
8 it?

9 A It was.

10 Q And, so, the Government was saying, for not having paid a  
11 2,000 or so dollar premium --

12 MR. TORNABENE: Objection. Objection. The Government  
13 wasn't --

14 THE COURT: I can't hear you.

15 MR. TORNABENE: The Government wasn't saying anything.

16 THE COURT: The Government. Correct.

17 Q (BY MR. JOHNSTON) The insurance company was telling you  
18 that, for a few thousand dollars in premium and that  
19 technicality, they were going to deny nearly a million-dollar  
20 claim.

21 A Yeah. They were acting on behalf of the RMA.

22 Q That was my next --

23 A That's what they were saying, yes.

24 THE COURT: Counsel --

25 MR. JOHNSTON: You've anticipated my next question.

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1 THE COURT: -- excuse me. Excuse me a second.

2 MR. JOHNSTON: Yes, sir.

3 THE COURT: He -- and, actually, not. So, I'm going  
4 to strike that answer because it's not responsive.

5 MR. JOHNSTON: And I agree.

6 Q (BY MR. JOHNSTON) It was the insurance company that denied  
7 the claim. Correct?

8 A Well, I think it was the RMA that denied the claim; and the  
9 insurance company said it was denied, yes.

10 Q And was that based on -- you mentioned a Mr. Paul.

11 A Yes.

12 Q Who is Mr. Paul? Would you tell us about who he was?

13 A Well, he is -- his background is he's a rodeo cowboy that's  
14 -- but he's in charge of the RMA in Spokane.

15 Q And had you had dealings with him before face to face?

16 A Yes.

17 Q On RM -- on AGR issues?

18 A Many times. I've had -- before this? This was -- this was  
19 in the beginnings of these claims. I've had a number of  
20 dealings with him.

21 Q In the fullness of your dealings with Mr. Paul, was there  
22 any question that he was the one in charge of claims decisions  
23 at that level?

24 A No.

25 Q And was there any question in your mind, from the fullness

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1 of your dealings, that he was the one that had to approve any  
2 denial or approval of a claim?

3 A Yes. And those things we just saw from Clifton Parker were  
4 also through him.

5 Q And did -- was there, actually, a review of the review that  
6 went to Mr. Paul --

7 A Yes.

8 Q -- in the Olsen case?

9 A I can't -- ask me that again.

10 Q Well, you've got the Parker letter. Was there, actually, a  
11 review of that at some point in time that was indicated to you  
12 as being by Mr. Paul?

13 A Clifton Parkins (sic) -- Parker told me that he met with  
14 Dave Paul.

15 Q Okay. Now, in terms of the -- let's see. We've got 21.  
16 Okay. Let's move to -- now, did you next, then, attempt to work  
17 out a resolution of the claim before filing an arbitration?

18 A If I did, I don't remember it. We filed arbitration so it  
19 wasn't very successful.

20 Q Okay.

21 MR. JOHNSTON: And, for the -- for the Court, Counsel,  
22 and the witness but not the jury, may we see 2135, which is a  
23 one-page document.

24 Q (BY MR. JOHNSTON) Now, when you file an arbitration  
25 demand, all you do is say, "We demand this amount of money based

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1 on a particular crop year." Correct?

2 A Yeah. There's a provision in the insurance policy as to  
3 how to do it in this commercial demand. These demands are,  
4 then, filed in a -- on a form under the -- with the American  
5 Arbitration Association.

6 Q And there are no, you know, arguments or anything else in  
7 these. It's just a straightaway, four-line complaint. Correct?

8 A Well, it's just like filing a Complaint in a civil court.  
9 You file it. Nobody reviews it.

10 Q And this, just for benchmark, we saw that the denial was on  
11 June 1. This document is -- was dated on August 30th of 2004.  
12 Is that correct?

13 A Yes.

14 MR. JOHNSTON: Okay. We would offer 2135, your Honor.

15 MR. TORNABENE: Objection for the reasons previously  
16 stated. We have the date. That's all we need.

17 THE COURT: I'm going to permit this. Go ahead. It's  
18 admitted.

19 (Exhibit No. 2135 admitted into evidence)

20 MR. JOHNSTON: Thank you.

21 Q (BY MR. JOHNSTON) And, then, did you go through a similar  
22 process that you described; that is, did you retain an  
23 accountant to assist in assembling the correctness of the  
24 numbers?

25 A Yes.

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1 Q And who was it that assisted you in regard to Poco's 2003  
2 claim?

3 A Dan Harper.

4 Q And did Mr. Harper determine that there had been some  
5 errors and so forth in the original reports?

6 A He starts at square one and goes through the whole process,  
7 yes.

8 Q And, based on his reports, did you, then, file an amended  
9 demand?

10 A I -- there was more money involved than that -- the 800,000  
11 just mentioned. That's --

12 Q Okay.

13 MR. JOHNSTON: And may we, for the Court, Counsel, and  
14 the witness but not the jury see 2136?

15 THE COURT: Yes.

16 Q (BY MR. JOHNSTON) And this is a document over the Leavy,  
17 Schultz, Davis, Fearing signature line, but it's by George  
18 Fearing. Would you tell us who George Fearing is.

19 A He's one of my law partners.

20 Q And did he work with you on this case?

21 A This and others.

22 Q And is the document -- amended claim -- is that simply a  
23 statement of the amount that was changed because of Mr. Harper's  
24 advice to you?

25 A Yes.

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1 MR. JOHNSTON: We would offer 2136, your Honor.

2 MR. TORNABENE: Object for the same reasons.

3 THE COURT: Overruled. Admitted. What's occurred to  
4 me is that it's clear that there's some foundation necessary to  
5 show the position of the claimants here, and these documents do  
6 that. So, I'm going to permit these.

7 (Exhibit No. 2136 admitted into evidence)

8 Q (BY MR. JOHNSTON) Now --

9 (Discussion off the record)

10 Q (BY MR. JOHNSTON) Then, did this case actually get  
11 arbitrated?

12 A Yes.

13 Q And do you recall where the arbitration was?

14 A You know, I don't. I'd say a local law office. It was  
15 either my office or John Raekes's office. I can't remember. We  
16 do, probably, use them interchangeably.

17 Q And your opponent -- faithful opponent was John Raekes --

18 A Yes.

19 Q -- in that case, as well?

20 A Yes.

21 Q And do you recall who the arbitrator was?

22 A No. It was an AAA arbitrator; and he signed the  
23 arbitration award giving us, basically, what we asked for.

24 Q And do you recall who was present at the arbitration?

25 A Well, obviously, my clients were there and Mark Masters

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1 from the insurance company. And I don't remember if Dave Paul  
2 was there or not. He might have been. As I'm thinking, it was  
3 -- the arbitration took place in Rettig-Osborne Building on  
4 Clearwater.

5 Q Was --

6 A And -- and he heard the arbitration and, then, wrote an  
7 opinion later.

8 Q Okay. Was there a Mr. Rippee as an adjuster who was also  
9 present?

10 A Yeah. I think Dave Rippee and Mark Masters were.

11 Q They were the insurance company --

12 A Yes.

13 Q -- guys?

14 A Yes. Yes.

15 Q And was Mr. Harper also there?

16 A Yes.

17 Q And was Mr. Harper's report submitted to you -- or  
18 submitted by you in Answers to Interrogatories before the  
19 arbitration hearing?

20 A Yeah. There's full disclosure of everything. Yes.  
21 Everything had been -- and the argument was back to -- that  
22 71.2 acres was the -- the focus of the defense was that because  
23 there hadn't been that 70 --

24 MR. TORNABENE: Object to the precise position of the  
25 parties.

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1 THE COURT: I'm sorry?

2 MR. TORNABENE: Objection to the precise position of  
3 the parties.

4 MR. JOHNSTON: I -- I don't think I'd asked.

5 THE COURT: No. It seems to me that the context, as  
6 it's evolving, is that some of this is necessary. So, go ahead.

7 MR. JOHNSTON: Can we have 2084, please? And this is  
8 for the Court, Counsel, and the witness but not the jury at this  
9 point. Now, can we look at the second page?

10 Q (BY MR. JOHNSTON) This is Mr. Harper's report, is that  
11 correct, addressed to George Fearing and dated January 1 (sic)  
12 of 2005?

13 A Yes.

14 Q Or 31 of 2005?

15 A Yes.

16 Q And this is the precise report that was presented, both  
17 before the arbitration and at the arbitration, as to the correct  
18 numbers. Correct?

19 A Yes.

20 MR. JOHNSTON: Your Honor, we would offer 2084.

21 THE COURT: And what is 2084? A one-page document?

22 MR. JOHNSTON: No, it's -- your Honor, it's -- it's  
23 a -- only Mr. Harper's report for the hearing. It's --

24 THE COURT: How many pages?

25 MR. JOHNSTON: -- not a big report. I think it's



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1 about -- it's -- it's 30 pages, your Honor.

2 THE COURT: I'm going to permit some part of this.

3 Are you asking for the whole thing? Is it really necessary for  
4 it all to go in?

5 MR. JOHNSTON: No, your Honor. The -- the tax return,  
6 the Schedule Fs and so forth at the back of it are -- are  
7 backup. The report itself really comes down to the first -- the  
8 letter itself is probably sufficient together with the first  
9 exhibit, which would be four --

10 THE COURT: Are there Bates numbers on the exhibit?

11 MR. JOHNSTON: First five pages. Your Honor, the  
12 Bates numbers begin at 751309, although it's blacked out on the  
13 first page, through 751313.

14 THE COURT: Mr. Tornabene, same objections?

15 MR. TORNABENE: Your Honor, we would be -- I guess our  
16 objection would be after page ending 324. It gets into the  
17 backup documentation that Mr. Johnston's talked about. The tax  
18 returns.

19 THE COURT: I think he was only talking about 751309  
20 through 751313, which is four pages. Is that correct,  
21 Mr. Johnston?

22 MR. JOHNSTON: Yes, that's correct. 09 through 13.

23 MR. TORNABENE: The backup documentation that extends  
24 to 324?

25 THE COURT: It's four pages. Just 09 through 13.

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1 MR. TORNABENE: We understand. But the backup  
2 document -- some of that backup documentation -- we're going to  
3 admit these -- these first pages, which seems appropriate. But  
4 some of that backup documentation should be included to  
5 Page 324. That doesn't include the tax return.

6 THE COURT: Well, I'm not going to make you do this on  
7 the fly. I'm going to admit this part. And, if you want to add  
8 to it later, then you can do it in cross.

9 MR. TORNABENE: Thank you, your Honor.

10 THE COURT: That's just fine with me.

11 MR. JOHNSTON: Your Honor, in looking at it, we have  
12 no objection to the 324 being the beginning and end.

13 THE COURT: The single page or from --

14 MR. JOHNSTON: No. From --

15 THE COURT: -- 09 through 24?

16 MR. JOHNSTON: -- 09 through 24.

17 THE COURT: Is that what you're asking for?

18 MR. TORNABENE: Yes.

19 THE COURT: Admitted.

20 MR. JOHNSTON: I think with counsel's request that's --

21 THE COURT: 09 through 24 on the Bates numbers.

22 751309 to 751324 admitted and may be published.

23 (Exhibit No. 2084 admitted into evidence)

24 MR. JOHNSTON: Thank you. And can we have the second  
25 page, then, please? Now, can we highlight the first paragraph

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1 and the section just below it?

2 Q (BY MR. JOHNSTON) Now, this was a report that you had  
3 requested from Mr. Harper. Correct?

4 A Yes.

5 Q And Mr. Harper's an independent certified public  
6 accountant. Correct?

7 A Yes.

8 Q And he's governed by the rules and precepts and ethical  
9 concepts of the AAICPA. Correct?

10 A Yes.

11 Q And you requested him to act independently. Is that  
12 correct?

13 A Yes.

14 Q Then, here it says that there was a difference. There's  
15 the adjuster at 818,158, which was the amount of the claim as  
16 you had initially filed it. Correct?

17 A Yes.

18 Q And Mr. Harper had found a number of things, which are  
19 explained in the letter, which lead him to a request of the  
20 indemnity of 1,454,450. Correct?

21 A Yes.

22 MR. JOHNSTON: And can we move forward to the fifth  
23 page, please? And can we highlight the columns? Just the  
24 center of the page to see it better. No, the description, as  
25 well. Yes.

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1 Q (BY MR. JOHNSTON) Now, this is -- these are the  
2 fundamentals of an AGR claim. Is that correct?

3 A Yes.

4 Q That is, you have the expenses, approved expenses. And, in  
5 the Government's column there, you see they have the expenses at  
6 59.5 percent?

7 A Yes.

8 Q Now, if they're below 70 percent, that requires a reduction  
9 of the approved AGR. Correct?

10 A Yes.

11 Q And that's reflected as they believed the adjusted AGR  
12 should be reduced by 418,849. Correct?

13 MR. TORNABENE: We would object and request  
14 clarification for "they believe." I believe we heard --

15 THE COURT: Sustained.

16 Q (BY MR. JOHNSTON) Okay. This was -- these were  
17 Mr. Rippee's figures. Is that correct? Isn't that the dialogue  
18 that was going on to try and find the numbers?

19 A These were the insurance company's represent -- numbers  
20 that had been reviewed and were presented to me.

21 Q And wasn't --

22 THE COURT: Counsel, I'm allowing you some  
23 foundational leading questions; but --

24 MR. JOHNSTON: Certainly.

25 THE COURT: -- you need to be asking some direct

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1 questions here.

2 Q (BY MR. JOHNSTON) Was it -- who was it that worked with  
3 Mr. Harper to try and harmonize the numbers?

4 A Well, our assignment to Mr. Harper was simply to review  
5 these documents and determine whether or not there, number one,  
6 was an AGR claim and, number two, what it was. Then, after he  
7 made that determination, where was the difference between his  
8 determination and that that had been provided earlier.

9 Q And both positions were, then, presented to the arbitrator.  
10 Is that correct?

11 A Yes.

12 Q And the arbitrator awarded the precise number calculated by  
13 Mr. Harper. Isn't that correct?

14 A He did.

15 Q Okay. And he -- and an award was issued in that amount?

16 A Yes.

17 Q And then what happened? Did we have another --

18 A Well, then, they -- then the direction was given to  
19 Mr. Raekes to file an action in the United States District Court  
20 claiming that the -- that the policy was void because of the  
21 71.2 acres that was uninsured.

22 Q I thought you said that arbitrations were final and that  
23 there was no appeal.

24 A Well, I don't know how much you want to go into what  
25 happened; but --

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1 THE COURT: Well, he only asked you that question.

2 THE WITNESS: They are.

3 THE COURT: Okay. Now you can ask another one.

4 THE WITNESS: And that was the ruling.

5 Q (BY MR. JOHNSTON) And, so, they, then, attempted to upset  
6 the -- the --

7 THE COURT: Counsel, you're leading the witness again.

8 Q (BY MR. JOHNSTON) Okay. What did the Government, then, do  
9 in their lawsuit? What was their attempt?

10 MR. TORNABENE: Objection, reference to the  
11 Government's lawsuit.

12 THE COURT: Sustained.

13 Q (BY MR. JOHNSTON) Excuse me, the insurance company.

14 A The insurance company, acting on the direction of the RMA --

15 MR. TORNABENE: Objection with regard to --

16 THE COURT: Sustained. Stricken. Just answer the  
17 question as asked. Go ahead.

18 Q (BY MR. JOHNSTON) What was asserted by the plaintiff, the  
19 insurance company, in the lawsuit?

20 A That there should be no coverage.

21 Q And the -- to make a long story short, did the -- was the  
22 arbitration award upheld?

23 A It was affirmed at the District Court level and then  
24 they -- then an appeal was --

25 Q You're anticipating my next question. What did they do

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1 after the arbitration award was affirmed?

2 A They filed a Notice of Appeal to the United States  
3 District -- or Court of Appeals.

4 Q And that's in San Francisco?

5 A The headquarters are in San Francisco.

6 Q And did the mediation process of that court come into play  
7 again?

8 A No. We didn't go to mediation. I think a decision was  
9 made, and I --

10 THE COURT: Excuse me, Mr. Schultz. Just -- I think  
11 you answered the question. A mediation didn't get invoked. So,  
12 what happened next?

13 Q (BY MR. JOHNSTON) Were there, then, settlement discussions  
14 about how much should be paid and whether there should be  
15 interest paid?

16 A Yes. There was an argument over the interest.

17 Q And what was the consequence of that -- those series of  
18 discussions with the insurance company?

19 A Poco settled the claim.

20 Q And they were paid, as we've seen, a check for 1.4 million  
21 even?

22 A The amount of the decision, I think, or pretty close.

23 THE COURT: I'm sorry, Mr. -- just -- I didn't hear you.

24 THE WITNESS: Yes, it was paid.

25 Q (BY MR. JOHNSTON) Okay. And it was paid at slightly less

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1 than the arbitration decision. Correct?

2 A Pennies, yeah.

3 Q Now, were any of your attorney's fees paid in connection  
4 with that resolution?

5 A Well, my client paid me.

6 Q I mean by the other side.

7 A No.

8 Q And that's because they're not recoverable in that kind of  
9 an action.

10 A That's right.

11 Q And that was not an inexpensive endeavor. Correct?

12 A I -- I can't tell you. I didn't -- I could find out, but I  
13 don't know. They probably remember. I don't.

14 Q Now, at the -- well, while the arbitration -- now, the  
15 arbitration -- I think it will indicate if I may lead the  
16 witness just a little -- was April 29th of 2005. Is that  
17 approximately right?

18 A Okay. Yeah.

19 Q Now, was there an issue, then, that arose as to the 2004  
20 claim at about that time?

21 A I think there was.

22 MR. JOHNSTON: And can we have Exhibit 2047, please,  
23 just for the Court, Counsel, and the witness.

24 Q (BY MR. JOHNSTON) And, Mr. Schultz, is this the letter by  
25 which Poco was advised that its 2004 claim was denied?



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1 A Yes.

2 Q And, in regard to the 2004 claim, you've discussed a  
3 declaratory judgment action with the Olsen claim. Was a nearly  
4 identical claim made against Poco by the insurance company in a  
5 declaratory judgment action?

6 A You know, I don't remember another -- there was only one  
7 lawsuit. I don't remember if there was. A claim was probably  
8 made, but --

9 Q Isn't it the case, or was it the case, that both Olsen and  
10 Peterson were sued -- or Poco, rather, were sued in the same  
11 lawsuit?

12 A I think they were, yeah.

13 Q And, so, you've already described how the declaratory --

14 A Yes.

15 Q -- judgment action went. So, we don't need to go through  
16 that again?

17 A Right.

18 Q All right. And that claim, then, at the point in time that  
19 the declaratory judgment action sent it off to arbitration, Poco  
20 changed lawyers at that point. Is that correct?

21 A Yes.

22 Q And, so, you continued for Mr. Olsen. And who was the  
23 lawyer who took over for Poco at that point?

24 A Brian Miller in Othello.

25 Q And I take it you didn't have anything further to do with

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1 that particular claim other than to, kind of, follow it?

2 A Other than Brian and I've worked on I think -- he and I've  
3 done a number of these claims.

4 Q Okay. And do you know what happened with that claim?

5 A I think it was settled, but I --

6 THE COURT: Excuse me, are you talking about the Poco  
7 claim with Miller involved?

8 MR. JOHNSTON: Yes. I was just asking if he knew the  
9 result. But that was, literally, your Honor, my last question.

10 THE COURT: Okay. Did you want to ask the question?

11 MR. JOHNSTON: Yes.

12 THE WITNESS: I think it was settled, but I really  
13 wasn't part of it at that point.

14 Q (BY MR. JOHNSTON) And you don't know the --

15 A No.

16 Q -- precise amount or do you?

17 A No.

18 MR. JOHNSTON: Okay. Thank you very much, Mr. Schultz.

19 THE COURT: For the record, 2047 was admitted May 1st.

20 MR. JOHNSTON: It -- it was admitted.

21 THE COURT: Previously admitted.

22 MR. JOHNSTON: Yes. May we display that just briefly  
23 to the jury, your Honor, so they can see what we were talking  
24 about?

25 THE COURT: Certainly. 2047.

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1 MR. JOHNSTON: And can we go to the third page just  
2 for a moment and look at the last paragraph?

3 Q (BY MR. JOHNSTON) And there the first sentence outlines  
4 the issue on which it was declined; that is, in part, that --  
5 that Tri-Cities was not a processor. Is that correct?

6 A That's the claim. I --

7 Q And -- and that was signed by Kevin Swanson. You mentioned  
8 Mr. Masters. Do you know where Mr. Swanson stood in the  
9 hierarchy?

10 A No. And they keep changing people in the insurance  
11 companies, too. So, I don't know.

12 MR. JOHNSTON: Okay. Thank you very much,  
13 Mr. Schultz. That's all I have.

14 THE COURT: Okay. Folks, let's take our morning  
15 recess at this time. Twenty minutes. Thanks.

16 (Jury out)

17 (Court recessed at 10:06 a.m.)

18 (Court reconvened at 10:27 a.m.)

19 THE COURT: Okay. We have some exhibit issues.  
20 Mr. Bentley, as I reflected on the position of the parties, I  
21 wanted to make sure that I appreciated what the defense was  
22 offering and for what. On the one hand, I thought I understood  
23 the defense case to be that the RMA and FCIA and all of the  
24 other companies had full information all the way along. And,  
25 therefore, their position and what they said points out that,

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1 knowing what they knew they, nevertheless, took a position that  
2 it was things completely unrelated to specific gravity and  
3 bruise free, et cetera, that were -- that the basis for their  
4 concerns, despite having all the information.

5 So, if you, like Mr. Johnston has with Mr. Harper's report,  
6 want to put in pages from the Harper report, go right ahead.  
7 That's up to you. I just wanted to make sure you could think  
8 that through so you could do that at some point while  
9 Mr. Schultz is here. Just think about it and let me know what  
10 you think.

11 MR. BENTLEY: Yes. I noticed Mr. Johnston got in the  
12 arbitration demand, and I -- I refrained from using that as an  
13 exhibit.

14 THE COURT: Well, I wanted to make sure that I was  
15 treating both of you fairly. And, as I looked at it, it seemed  
16 clear to me those were all fundamental things that weren't a  
17 story so much as they were just a fact. This happened. That  
18 happened. Here's the demand. Here's the amounts in  
19 controversy. So, think it through.

20 MR. JOHNSTON: Your Honor, may I address just one  
21 question? The Harper -- later Harper report will come in  
22 through Judge Miller. But Judge Miller is -- has a medical  
23 issue and is only available at -- on Monday morning. And I  
24 wanted to ask the Court's indulgence, if it's necessary, to take  
25 him out of order; that we could start with him on Monday morning

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1 given his schedule and his --

2 THE COURT: Whatever the -- whatever. I'm at the  
3 parties' disposal. Whatever's reasonable for you folks is fine.

4 So, are we ready to go?

5 MR. JOHNSTON: Yes.

6 THE COURT: Okay. Let's proceed.

7 Oh and, in follow up, Mr. Bentley, Mr. Tornabene had an  
8 objection as to some things; but you had a number of things  
9 marked and some of which you didn't seek to admit through this  
10 witness. I just assume it was a trial judgment on your part.  
11 So -- I mean, you went over a number of things that you were  
12 using. I didn't know if they were just to refresh or if you  
13 were going to mark them and put them in. So, it's up to you.

14 MR. BENTLEY: Well, if the occasion should arise, I  
15 will try to offer the arbitration demand that Olsen and Olsen Ag  
16 made with regard to the '01 and '02 claims because it's really  
17 the same as what Mr. Johnston was allowed to offer on his claim.

18 THE COURT: I'm going to admit that. If you want to  
19 move it, tell me what the number is.

20 (Jury in)

21 THE COURT: Please be seated. Okay. Let's resume.  
22 And, Mr. Bentley, when you have that exhibit number, let me know  
23 what it is.

24 MR. BENTLEY: It's Exhibit 1037.

25 THE COURT: 1037 for -- Mr. Tornabene, same

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1 objections?

2 MR. TORNABENE: Yes.

3 THE COURT: 1037's admitted.

4 (Exhibit No. 1037 admitted into evidence)

5 THE COURT: And that is the --

6 MR. BENTLEY: It's the Olsen arbitration demand with  
7 respect to the '01 and '02 AGR claims.

8 THE COURT: Okay. If at some point you --

9 MR. BENTLEY: Dated August 31, '04.

10 THE COURT: If you want to put it on the screen with  
11 this witness before he leaves, let me know. Thanks.

12 Go ahead. Who's up next? I had Mr. Johnston. Have you  
13 concluded?

14 MR. JOHNSTON: I am, your Honor.

15 THE COURT: Is there anybody else on the defense team  
16 for questioning? If not, Mr. Tornabene, if you're going to take  
17 this, then, I think, you're up.

18

19 CROSS EXAMINATION

20 CROSS BY MR. TORNABENE:

21 Q Good morning, Mr. Schultz.

22 A Good morning.

23 Q Mr. Schultz, you, of course, were retained by Mr. Olsen for  
24 the Olsen '01 and -- and '02 claims we've been talking about?

25 A Yes.

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1 Q And you were later retained by Poco, through Mr. Peterson,  
2 for those related claims?

3 A Yes.

4 Q And, obviously, in those capacities, you were advocating  
5 for your clients. Correct?

6 A Yes.

7 Q And I think, as you put it, there was a lot of money on the  
8 line?

9 A Yes.

10 Q Now, you mentioned a Mr. Dan Harper, the accountant?

11 A Yes.

12 Q And, at some point, he was retained, I think you said, to  
13 provide independent judgment?

14 A Yes, by me to evaluate the claim and as a potential  
15 witness. And he did testify.

16 Q And, now, how much was he paid?

17 A Gee, I don't remember but at an hourly rate. I could  
18 guess, but I don't know for sure.

19 Q The -- do you have occasion in -- in your practice to  
20 retain CPAs for various legal issues?

21 A Yes.

22 Q And what would be the typical rate that was being charged  
23 in the time period?

24 A Probably a couple hundred dollars an hour. My guess is his  
25 fees would -- in this case, would have been \$15,000 maybe.

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1 MR. TORNABENE: All right. Thank you. Nothing  
2 further.

3 THE COURT: Okay. Then it would seem, Mr. Bentley,  
4 you can reopen to do that if you'd like.

5

6 REDIRECT EXAMINATION

7 REDIRECT BY MR. BENTLEY:

8 Q Mr. Schultz, in my examination, you mentioned the demand  
9 for arbitration on the '01 and '02 claims.

10 MR. BENTLEY: And if we could have the ELMO, please.

11 Q (BY MR. BENTLEY) Is that the first page of the demand for  
12 arbitration?

13 A Yes.

14 MR. BENTLEY: And this is in evidence. It should be  
15 published to the jury.

16 THE COURT: What is the exhibit number?

17 MR. BENTLEY: 1037.

18 THE COURT: 37? Admitted and may be published.

19 (Exhibit No. 1037 admitted into evidence)

20 Q (BY MR. BENTLEY) And, in this demand, what was your client  
21 seeking in terms of money on the '01 year claim?

22 A 588,000.

23 Q And what were they seeking on the '02 claim?

24 A \$2,407,508.

25 Q And did they also seek some action regarding American



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1 Growers reimbursement claim?

2 A Yes --

3 Q What --

4 A -- to deny the claim.

5 Q Okay. Looking at the second page, is that a demand for  
6 arbitration that spells out what was sought?

7 A Yes. It was probably attached to the prior page.

8 Q And does it bear your signature?

9 A Yes.

10 MR. BENTLEY: No further questions.

11 THE COURT: Anyone else on this? Mr. Tornabene, any  
12 questions on this?

13 MR. TORNABENE: No, your Honor.

14 THE COURT: Okay. Mr. Schultz, thank you for being  
15 here. You're excused and you may step down. Do you have any  
16 exhibits there, Mr. Schultz?

17 THE WITNESS: I do not. I had the books. I gave them  
18 back.

19 THE COURT: Thank you. Okay. Next witness.

20 MR. BENTLEY: Steve Sackmann.

21 MR. TORNABENE: Your Honor, this is not a person that  
22 we've been advised of for today.

23 THE COURT: If he's not advised as of today, you can't  
24 call him.

25 MR. BENTLEY: I have no documents with this person,

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1 your Honor.

2 THE COURT: I don't know that that's the point. Do  
3 you -- why don't you two talk about this.

4 (Discussion off the record)

5 THE COURT: How do you want to proceed?

6 MR. BENTLEY: Mr. Vovos has some witnesses, your  
7 Honor.

8 THE COURT: Okay. Thank you. Mr. Vovos?

9 MR. VOVOS: Yes. May I go to the --

10 THE COURT: If you wish.

11 MR. VOVOS: I have to get him, Judge. Thank you.

12 THE COURT: Okay.

13 MR. VOVOS: Tom Heath.

14 THE COURT: I'm making the assumption that  
15 Mr. Sackmann was not an emergency issue of some sort that had to  
16 be accommodated. But that's between you and counsel. But  
17 that's the assumption I'm making. But you two work it out.  
18 And, if you can't, then, the rule applies.

19 (Witness enters courtroom)

20 THE COURT: Good morning. If you'd just place your  
21 back to the door so we can take your photograph for use by the  
22 jury during deliberations. Thank you.

23 (Courtroom Deputy takes picture of the witness)

24 THE COURT: Please, raise your right hand.

25 (TOM HEATH, called by the Defendant, was sworn)

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1 THE COURT: Please just be seated. Tell us your first  
2 and last name and, then, spell them both for the record.

3 THE WITNESS: Tom Heath. T O M. H E A T H.

4 THE COURT: Good morning. You may proceed.

5 MR. VOVOS: Please the Court, ladies and gentlemen of  
6 the jury.

7

8 DIRECT EXAMINATION

9 DIRECT BY MR. VOVOS:

10 Q Mr. Heath, where do you live?

11 A Moses Lake.

12 Q Okay. And would you tell the jury what your profession or  
13 occupation is, please?

14 A Yes. I'm a vice president with Washington Trust Bank, in  
15 Moses Lake.

16 Q And, as the Vice President of Washington Trust Bank in  
17 Moses Lake, can you explain to the jury what you do, just  
18 generally?

19 A Yes. My primary function is as a commercial and  
20 agricultural loan officer dealing with businesses throughout  
21 Eastern Washington.

22 Q When you say, "a commercial," can you state whether or not  
23 you deal with agribusiness or farm loans?

24 A Yes, I do. I deal with both business and agriculture. I'm  
25 sorry if I didn't state that.

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1 Q That's okay. That's okay. Can you tell the jury what your  
2 background in banking is, in a general sense, prior to your  
3 current position at Washington Trust Bank?

4 A Yes. I graduated from Washington State University in 1982  
5 with a degree in agricultural economics. I was -- worked for  
6 the Farm Credit System for a few years in the Willamette Valley  
7 of Oregon. After that, I worked at a bank in Omak for four  
8 years. Again, at that time, doing similar to what I do now,  
9 working with both business and agricultural business owners.  
10 Worked in Helena, Montana, for three years, again, doing the  
11 same thing. And, since 1991, I've been in -- with Washington  
12 Trust Bank in my current role both in Moses Lake and in  
13 Wenatchee.

14 Q Is the Washington Trust Bank a federally insured bank in  
15 the United States?

16 A Yes, we are.

17 Q Okay. And could you explain, in a general sense, in  
18 dealing with people in agri-business or farmers as far as loans  
19 or financing, what type of documentation or information do you  
20 obtain from a customer if somebody wants to borrow money, for  
21 example?

22 A Well, the circumstances vary based on the type of loan, the  
23 amount of loan. But we are asking for financial statements on  
24 the individuals, the owners of the business. We're asking for  
25 financial statements on the business, itself. We ask for tax

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1 returns. Depending on the type of operation, we may ask for  
2 budgets. We ask for different corporate documents. We may ask  
3 for accounts receivable and accounts payable listings. It just  
4 depends on the type of financing that we're providing to that  
5 individual business and its owners.

6 Q Okay. Can you state whether or not, in your banking  
7 experience, you have dealt or come to know Blake Bennett, Mark  
8 Krcma, or Steve Cox at Tri-Cities Produce?

9 A Yes, I have.

10 Q And can you tell the jury, just generally, what year are --  
11 are we talking about? Would be the early 2000 or so.

12 A If memory serves me, we began our banking relationship with  
13 those gentlemen and their businesses in 2002.

14 Q Can you state whether or not you -- your bank, Washington  
15 Trust Bank, has provided financing for Tri-Cities Produce over  
16 the years and -- and related companies? I believe there are  
17 other companies --

18 A Yes.

19 Q -- that are related with it.

20 A Yes. We have -- we have provided financing to Tri-Cities  
21 and others.

22 Q And does that include equipment financing?

23 A Yes.

24 Q And does it also include loans for the purpose --  
25 purchase -- for the expansion of -- of Tri-Cities Produce or

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1 improvements of -- of that business, if you know?

2 A Yes, it included that.

3 Q And are the loans -- you say, fairly substantial. Can you  
4 give us an idea of the operating -- the operating lines of  
5 credit for Tri-Cities and its related business, just in a --  
6 just in a general sense?

7 A It varies from year-to-year. But our financing would  
8 probably run in the -- from the 7 to \$10 million range for debts  
9 outstanding with the companies.

10 Q When we talk about this, so the jury will know, is the bank  
11 in a secured position? That is, do they have security and --

12 A Yes, we do.

13 Q Okay. And are all the companies cross collateralized with  
14 Washington Trust Bank? The companies that are involved with  
15 Tri-Cities Produce and farms.

16 A Yes, sir, they are.

17 Q Okay. Do you know who an Alan Schlimmer is?

18 A Yes.

19 Q And who is he?

20 A He is an accountant and I believe a partner in an  
21 accounting firm by the name of J.R. Newhouse & Company in Moses  
22 Lake.

23 Q Okay. Can you tell the jury how -- how -- how you happened  
24 to become acquainted with Mr. Bennett or his partners or  
25 Tri-Cities Produce, in a general sense?

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1 A Yes. Mr. Schlimmer, the certified public accountant,  
2 introduced me to Mr. Bennett and introduced him to the bank, I  
3 should say, in 2002. I was acquainted with Mr. Schlimmer prior  
4 to that time.

5 Q Does Tri-Cities Produce or its companies provide financial  
6 statements and income tax returns to the bank for review?

7 A Yes.

8 Q And can you state whether or not, in the ordinary course of  
9 business, that lines of credit or financing are reviewed on an  
10 annual basis or a semiannual basis?

11 A Yes. They are reviewed on a -- typically, an annual basis.

12 Q Okay. Can you state whether or not you were aware that  
13 Tri-Cities Produce has loaned money to Lynn Olsen?

14 A I'm sorry. Say the question again.

15 Q Were you aware that Tri-Cities Produce had loaned money to  
16 Lynn Olsen in about 2002?

17 A Yes.

18 Q And was this something, if you can state whether or not in  
19 a general sense, that your bank knew about?

20 A Yes. We were aware of it.

21 Q Was it discussed with the principals of Tri-Cities Produce?

22 A Yes.

23 Q Can you state whether or not, on the financial statements  
24 or documents that Tri-Cities Produce provided, whether or not  
25 the loan to Lynn Olsen was reflected?

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1 A Yes, it was reflected.

2 Q Do you have information, if -- if -- if you can recite it  
3 generally, how that loan to Lynn Olsen came about?

4 MR. ANDERSON: Objection, your Honor. It would have  
5 to be hearsay.

6 THE COURT: Sustained. Unless you lay a foundation,  
7 Counsel, that he was involved in the -- in the negotiations in  
8 some fashion or other, there's no foundation for that -- his  
9 knowledge.

10 Q (BY MR. VOVOS) Okay. Can you state whether or not that  
11 loan continued from 2002 up to and including the present time?

12 A I don't recall when the loan was originated between  
13 Mr. Olsen and Tri-Cities Produce; but, yes, it's been reflected  
14 up to present date on their financial information.

15 Q All right.

16 THE COURT: On whose?

17 THE WITNESS: Tri-Cities Produce, your Honor.

18 THE COURT: Thank you.

19 Q (BY MR. VOVOS) In the financing of -- well, just talk  
20 about -- what is 3P Farms? Is that -- is that a farming  
21 operation that is owned in part by Mr. Bennett and other  
22 individuals?

23 A Yes, that's correct.

24 Q Do you provide -- does Washington Trust Bank provide  
25 financing to them?



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1 A Yes, we do.

2 Q Can you state whether or not the insurance on crops or any  
3 financing is part of any security that the -- that the bank has  
4 or insists on? And "insurance" meaning is -- is insurance a  
5 requirement for obtaining financing for crops in the farm  
6 operation?

7 A I'm sorry. Are you -- I just want to clarify. Are you  
8 referring to crop insurance?

9 Q Yes. I'm talking about crop insurance.

10 A We don't require it on 3P Farms at this time. But, in  
11 years past, yes, we did require it as a condition of financing.

12 Q Okay. Can you state whether or not if Washington Trust  
13 Bank has liens or obligations? Are insurance checks ever made  
14 payable to the bank and to the principal company, for example?

15 A They have been, yes. In the past, when we had a -- when we  
16 required it as a condition, we would take an assignment of the  
17 insurance policy. And, if there were -- I don't recall if there  
18 were crop insurance checks paid during those years. But, if  
19 they would, they would have been -- we would have required the  
20 checks be made jointly payable to both the bank and the  
21 borrowing entity.

22 Q Has Washington Trust Bank continued up to the present date  
23 to lend money to Tri-Cities Produce, Mr. Bennett, and his  
24 partners, even after the charges had been leveled in this case?

25 A Yes.

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1 MR. VOVOS: You can cross-examine.

2 THE COURT: I gather that means you've concluded,  
3 then. Mr. Bentley, do you have some questions?

4 MR. BENTLEY: Yes.

5 THE COURT: Okay.

6 MR. BENTLEY: Could we get up Exhibit 142, please.

7

8 CROSS EXAMINATION

9 CROSS BY MR. BENTLEY:

10 Q Hi, Mr. Heath. My name is Allen Bentley, and I represent  
11 Lynn Olsen.

12 A Good morning.

13 Q Morning. Mr. Heath, you probably have not seen this  
14 document before; but it is in evidence. Can you tell us from  
15 the heading of the document what it appears to be?

16 A It simply states "J.R. Simplot Company, Open Purchase  
17 Potato Contract."

18 Q Okay.

19 A Between J.R. Simplot Company and Tri-Cities Produce.

20 Q And did Washington Trust Bank have a lien on potatoes that  
21 are owned by Tri-Cities Produce, if you know, back in the year  
22 of this contract, March of '04?

23 A We were providing financing at the time. I -- I don't know  
24 if we had a lien on the potatoes of Tri-Cities Produce,  
25 specifically.

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1 MR. BENTLEY: Could we -- could we go to page -- the  
2 final page of this document. And go up a little bit, please.  
3 Thank you.

4 Q (BY MR. BENTLEY) Looking at the final page where the  
5 signatures are, do you see under Paragraph XII, "Grower will be  
6 financing/has financed the potato crop through Washington Trust  
7 [Bank], Kennewick." Do you see that?

8 A Yes.

9 Q Does that suggest to you that Tri-Cities Produce recognized  
10 some type of collateral obligation or security interest that  
11 your bank would have in these potatoes?

12 A Yes.

13 Q And, based on your familiarity with financial matters  
14 relating to agribusiness, is it uncommon, excuse me, to -- to  
15 see a two-party check being issued by a company like J.R.  
16 Simplot when it purchases potatoes?

17 A It's common to see a two-party check.

18 Q And, if J.R. Simplot were to make payment on this contract  
19 to Washington -- to -- to Tri-Cities Produce and Washington  
20 Trust in the ordinary course of business, would you expect that  
21 to be a two-party check with both Tri-Cities Produce and your  
22 bank as payees?

23 A Yes, I would expect it.

24 Q And that's -- and that's the reason for this paragraph, is  
25 it not?

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1 A That's correct.

2 Q Okay.

3 MR. BENTLEY: Could we go to 143.

4 THE COURT: Previously admitted?

5 MR. BENTLEY: Previously admitted. And the final  
6 page.

7 Q (BY MR. BENTLEY) And do we see here the -- the very same  
8 words written in hand -- handwriting that grower has either  
9 financed or is financing the crop through Washington Trust in  
10 Kennewick? Do you see this?

11 A Yes, I do see that.

12 Q Very similar --

13 A Yes.

14 Q -- to the last one. Now, you have no personal knowledge of  
15 whether J.R. Simplot issued a check to Tri-Cities Produce alone  
16 or to Tri-Cities Produce and Washington Trust Bank at this time,  
17 do you?

18 A No, I do not.

19 Q But, in the normal course, you would expect that there  
20 would have been a two-party check issued in order to protect the  
21 collateral interest or the security interest of your bank.  
22 Correct?

23 A Yes.

24 Q And, if that -- and, if there were a two-party check of  
25 that kind, it would be -- that would be the way to assure that

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1 the bank received the payment and, if applicable or if  
2 appropriate, it was used to reduce the balance outstanding on  
3 the line of credit of Tri-Cities Produce.

4 A Correct.

5 MR. BENTLEY: Thank you.

6 THE COURT: Anyone else for examination of this  
7 witness? All right. And, then, for the Government?  
8 Mr. Anderson, good morning. You may proceed.

9

10 CROSS EXAMINATION

11 CROSS BY MR. ANDERSON:

12 Q Good morning, Mr. Heath.

13 A Good morning.

14 Q The documents that you were just shown, they indicate some  
15 sort of a security interest for your bank. Can you tell who  
16 that's in favor of? Whether it's Mr. Olsen or Tri-Cities  
17 Produce?

18 A I believe it said the grower. I'd have to look at the  
19 document again, but I believe the grower was Tri-Cities Produce.  
20 I -- I'd have to look at the document again.

21 Q I'll bring that back up. It would be Government's 143.  
22 Does this look like that document?

23 A Yes.

24 Q And I can go down to the last page. Who does the grower  
25 appear to be?

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1 A Lynn Olsen.

2 Q Okay. And do you know how he's related business wise with  
3 Tri-Cities Produce?

4 A Can you clarify that, please? I'm not sure.

5 Q Do you know how he's related to the business of Tri-Cities  
6 Produce?

7 A Are you referring to ownership? I'm not sure what you're  
8 referring to, sir.

9 Q Ownership. Let's start off with ownership. Are you aware  
10 of him being related ownership wise to Tri-Cities Produce?

11 A No.

12 Q Okay. What is your understanding of any relationship Lynn  
13 Olsen would have with Tri-Cities Produce?

14 A Mr. Olsen delivered potatoes to -- as a grower to  
15 Tri-Cities Produce for a number of years. I -- that's, I  
16 believe, the extent of their relationship. He now does custom  
17 farming for the related entity 3P Farms. I understand Mr. Olsen  
18 was a farmer and has equipment; and he does the majority of the  
19 farming practices for 3P Farms, the related entity, even today.

20 Q You mentioned that your bank has extended credit to  
21 Tri-Cities Produce?

22 A Yes.

23 Q Could you tell us what type of credit that is?

24 A With Tri-Cities Produce, our loans are for the facility in  
25 Pasco and equipment.

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T. HEATH/CR - ANDERSON

1 Q So it's the property?

2 A Let me clarify that. The facility is actually owned by  
3 another related entity called M & B Properties. We have  
4 provided financing for the improvements that have been made to  
5 that facility. We have provided financing over the course of  
6 time for equipment that, I believe, was owned by Tri-Cities  
7 Produce.

8 Q Any other type of financing?

9 A We provide operating financing to the farming entity, which  
10 is 3P Farms.

11 Q Are there separate agreements for that type of financing?  
12 Or is that all under one -- one, sort of, umbrella agreement to  
13 provide financing to Tri-Cities Produce?

14 A No. Each loan is documented separately to the borrowing  
15 entity. And, then, we have -- the other entities guarantee the  
16 debt, and the individuals guarantee the debt, as well.

17 Q And when were loans first extended to Tri-Cities Produce?

18 A If memory serves me, it was 2002.

19 Q And that would have not been the beginning of the company.  
20 It started in 2000, early 2001. Is that right?

21 A I believe that's correct, sir.

22 Q Your bank, then, was not involved in providing financing  
23 for the acquisition of that business by Mr. Bennett?

24 A Correct. We were not involved.

25 Q Okay. And the total amount of credit initially extended to

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1 Tri-Cities Produce. What was that?

2 A I don't recall.

3 Q Can you give us an idea? Was it over a hundred thousand?  
4 Over a million?

5 A May I ask for a clarification? Are you referring to,  
6 again, Tri-Cities Produce or are you referring to all -- all  
7 three related entities or --

8 Q Just -- just Tri-Cities Produce for the purpose of our --  
9 of your testimony this morning.

10 A I don't recall the amount back in 2002. I'm sorry.

11 Q You did mention a total amount, though, I think, over the  
12 years of 7 to -- 7 to 10 million? Line -- is that a line of  
13 credit you referenced?

14 A That would be the sum of all the loans that we have  
15 outstanding with the company from time to time during the year  
16 to all of the -- all of the related entities.

17 Q Okay. What about just to Tri-Cities Produce?

18 A I don't believe we have any loans out to Tri-Cities Produce  
19 at the moment. We have to the other entities, though.

20 Q Okay. Do you recall when the last time you would have had  
21 a loan extended to Tri-Cities Produce?

22 A Approximately, five years ago.

23 Q And what do you look at as far as factors when someone  
24 applies, like Tri-Cities Produce did, for financing at your  
25 bank?



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1 A As I mentioned a few minutes ago, we look at any number of  
2 factors. We look at the financial statements of the company to  
3 assess the overall strength of the borrowing entity. And I'm  
4 just going to use that in the plural because we look at all  
5 three entities together. We look at past history, the  
6 profitability. We look at the -- we balance, or also include  
7 when we look at profitability, the other loan payments that they  
8 have to make for machinery, equipment, real estate to make sure  
9 that, if they are borrowing more dollars, that, at least,  
10 historically, they have adequate funds, you know, on a  
11 historical basis to make that new loan payment.

12 We also can look at times at the -- if they are planning to  
13 make changes or do things in the future. If they are, for  
14 instance, doing an expansion to the building that will generate  
15 more revenue or reduce expenses, we would factor those -- those  
16 issues into -- into our analysis, as well.

17 Q And you and your bank have experience in extending this  
18 kind of credit to this part of the agricultural industry?

19 A Yes, sir.

20 Q How do you -- how do you verify that information?

21 A The financial information's typically from tax returns that  
22 are prepared by, in this case, the certified public accountant.  
23 We ask for internal reports. We will sometimes ask for the -- a  
24 business to also provide a CPA-prepared independent financial  
25 statement. More than just the tax returns but, actually, a

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1 full -- full set of financial statements and financial records  
2 for us.

3 Q And do you know where that type of information came during  
4 this application process for Tri-Cities Produce? Who provided  
5 that?

6 A J.R. Newhouse & Company was the CPA firm that was providing  
7 the tax returns. The internal financial reporting would have  
8 come from the Tri-Cities Produce and the related entities.

9 Q Do you recall what was done to verify the information that  
10 was received from Tri-Cities Produce?

11 A What information are you referring to, sir?

12 Q Any type of financial information that Tri-Cities Produce,  
13 itself, would have provided to your bank.

14 A Are we referring back to 2002?

15 Q 2002. Correct. The initial --

16 A I'm sorry. I don't recall what verification we would have  
17 done back then. We -- I do recall we made onsite visits to the  
18 properties that they owned.

19 Q But it would be important to show all sources of potential  
20 income in applying for credit with your bank? Is that correct?

21 A Yes.

22 Q And all expenses, as well?

23 A Yes.

24 Q Okay. And what's your understanding of what Tri-Cities  
25 Produce does?

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1 A Tri-Cities Produce is a potato processing facility. They  
2 bring in raw potatoes. Fresh potatoes, I should say. And they  
3 run them through their facility. They clean them. They wash  
4 them. They grade them. They, then, sell them to -- into the --  
5 the various markets that they have that they -- that they sell  
6 into.

7 Q As part of this application for financing -- by "this," I  
8 mean any of the applications that they've made to your bank --  
9 have they ever provided any sort of a business plan?

10 A Not that I recall.

11 Q Okay. Do you know what a business plan is?

12 A Yes, sir.

13 Q Can you describe what that is for us?

14 A Well, a business plan can take any number of -- it can look  
15 any number of different ways. But it -- in general, a business  
16 plan is provided by the -- the business owner; and it talks  
17 about the various factors that are important to the success of  
18 their business. It may talk about financing. It may talk about  
19 marketing. It may talk about employees. It may -- it -- a  
20 business plan would vary greatly depending on the type of  
21 business that the person is operating or is considering  
22 operating.

23 Q And when -- in 2002 forward to -- through, let's say, 2004,  
24 2005, what was your understanding of what would be done with  
25 these funds that were extended as credit to Tri-Cities Produce?

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1 What was that money for?

2 A Well, again, we had -- we have different types of loans  
3 that were made to Tri-Cities Produce and the related entities.  
4 Are you -- are you speaking specifically about Tri-Cities  
5 Produce, or are you talking about the related entities, sir?

6 Q Yeah. I'm just talking about Tri-Cities Produce.

7 A My recollection is that, again, Tri-Cities -- the funds  
8 that were extended to Tri-Cities Produce were for improvements  
9 to the facility in Pasco.

10 Q And what type of oversight did you have as to what was done  
11 with those actual funds?

12 A I don't -- I don't recall my steps from ten years ago. I  
13 mean, I can tell you in general what we would do.

14 Q What's your bank practice for oversight of funds that are  
15 extended as credit to a customer, such as, Tri-Cities Produce?

16 A Well, for -- are we referring to those -- that specific  
17 type of transaction where they were making improvements to the  
18 facility, sir?

19 Q Let's take that one first.

20 A We would typically -- if there is work being done to the  
21 facility, we would inspect it to make sure that the work that is  
22 being billed, say, by a contractor or an equipment dealer that  
23 is bringing equipment into the facility, we would do an onsite  
24 inspection to make sure that the work was actually done. The  
25 equipment that was being financed or installed was, in fact,

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1 installed and working properly. We would want to see a bill of  
2 sale or an invoice or some documentation from the -- the -- the  
3 contractor or the equipment dealer or the seller to verify make,  
4 model, serial number, those sorts of things. And, then, after  
5 that, we would disburse the funds.

6 Q And that was -- this is with regard to the equipment. Now,  
7 as I also understand it, there was a line of credit, as well --

8 A Correct.

9 Q -- that was extended?

10 A To 3P Farms, sir.

11 Q Okay. That did not involve -- okay. So that did not  
12 involve Tri-Cities Produce.

13 A That's correct.

14 Q It's just that loan for equipment.

15 A To the best of my recollection, that's all we've provided  
16 to Tri-Cities Produce.

17 Q You -- you mentioned to counsel that you understood or you  
18 had knowledge that Tri-Cities Produce did loan money to Lynn  
19 Olsen. Is that right?

20 A Yes, sir.

21 Q Why would your bank need to know that?

22 A We require full disclosure of all assets and liabilities  
23 from our clients.

24 Q It's important for the security of that loan? Would that  
25 be accurate?

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1 A No. I -- I don't think that's accurate. Not for the  
2 security of the loan.

3 Q Okay. Was this a secured loan?

4 A Yes.

5 Q What was it secured by? The equipment itself?

6 A To the best of my recollection, yes.

7 Q Okay.

8 A It was just equipment.

9 Q And there were some sort of terms where Tri-Cities Produce  
10 would have to pay back this loan. Is that correct?

11 A Yes.

12 Q And there may be certain things going on in the business of  
13 Tri-Cities Produce that would affect its ability to pay back  
14 this loan. Isn't that correct?

15 A Yes.

16 Q And that could include Tri-Cities Produce, in turn,  
17 extending credit out to one -- to one of the growers that it  
18 contracted with. Is that correct?

19 A Yes.

20 Q Are you aware of the amounts that Tri-Cities Produce loaned  
21 to Mr. Olsen?

22 A Yes.

23 Q Can you tell us what those amounts are?

24 A I -- I don't know the exact amount. Are you referring to  
25 today or --

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1 Q Do you know what the total was, say, in 2004?

2 A No. I don't recall the amount in 2004, sir.

3 Q What's your understanding of what the total is today?

4 A Approximately, 4.5 million.

5 Q Okay. Are you aware of any documentation to support those  
6 loans, such as loan agreements?

7 A No.

8 Q Okay. Are you aware of any repayment terms?

9 A No.

10 Q Are you aware of any interest that Tri-Cities Produce would  
11 require on that -- on those loans?

12 A No.

13 Q Are you aware of Mr. Olsen having any sort of signing  
14 authority for Tri-Cities Produce?

15 A Not to my knowledge. May I ask for clarification? I'm  
16 sorry, your Honor.

17 Q Are you aware --

18 A Signing authority for what, sir? There's --

19 Q Place a signature on a document that might bind Tri-Cities  
20 Produce in any manner.

21 THE COURT: You mean today?

22 Q (BY MR. ANDERSON) During -- during the time you've had  
23 these loans through Tri-Cities Produce that you would have been  
24 aware of.

25 A As it relates to any of the bank documents, no. He had no

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1 signing authority.

2 Q And is it your understanding that Mr. Olsen has paid off  
3 all these loans? Or you said he didn't. There was an  
4 outstanding amount. Is that right?

5 A There's an outstanding amount, sir.

6 Q Okay. And what's your understanding of how much he has  
7 paid off on those loans?

8 A On a net basis, there are -- there's money being advanced  
9 and there are payments back on the loan during the course of the  
10 year.

11 Q Okay. And you don't recall when those payments were made?

12 A No.

13 MR. ANDERSON: I have no other questions, your Honor.  
14 One second.

15 (Discussion off the record)

16 Q (BY MR. ANDERSON) When -- well, you mentioned that you're  
17 familiar with Tri-Cities Produce making these loans to  
18 Mr. Olsen. How were they categorized when they were disclosed  
19 to you? As an asset? As a liability?

20 A I -- I'm not an accountant. But, I believe, according to  
21 accepted accounting principles, it would be a loan receivable;  
22 would show as an asset on a -- on any financial statement.

23 Q Loan receivable?

24 A That's correct.

25 Q It wasn't shown as any sort of account receivable or -- is



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1 that considered a long-term type of loan?

2 A It was listed as the -- as a loan receivable on the  
3 company's financial statement.

4 Q Okay. But, in terms of -- of the length of that loan, do  
5 you have any understanding of the length of that loan?

6 A I'm not sure I understand.

7 Q You had no understanding of the terms of the loan to begin  
8 with, as I believe you testified before.

9 A No. That was -- we were aware that it was not going to be  
10 paid off in the course of a single year.

11 Q And how were you aware of that?

12 A Mr. Olsen wasn't -- according to Mr. Bennett and the others  
13 in the company, Mr. Olsen wasn't in a position to pay the loan  
14 off.

15 Q Okay. And -- and this loan that we're talking about, it  
16 was just for that property -- or just for that equipment at  
17 Tri-Cities Produce.

18 MR. BENTLEY: Objection to the form. I'm not sure  
19 what loan we're talking about right now.

20 THE COURT: Sustained.

21 Q (BY MR. ANDERSON) I think we -- were we just talking about  
22 one loan that was extend to Tri-Cities Produce for equipment?

23 A Yes.

24 Q Okay.

25 (Discussion off the record)

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1 MR. ANDERSON: I have no other questions.

2 THE COURT: Thank you. Redirect, Mr. Vovos. Do you  
3 have some redirect?

4 MR. VOVOS: Yes.

5 THE COURT: Okay.

6

7 REDIRECT EXAMINATION

8 REDIRECT BY MR. VOVOS:

9 Q Hi, again, Mr. Heath. Keeping with the last question,  
10 counsel asked you about the -- your knowledge of -- of this loan  
11 to Mr. Olsen. Can you state whether or not this was a -- was a  
12 loan for farming -- for farming purposes?

13 A Yes. It was -- we understood that the loan was for farming  
14 purposes for Mr. Olsen's farm operation.

15 Q And do you understand if there was any information from  
16 Mr. Olsen's bank as to, potentially, what may be used to pay  
17 back that loan if it was not to be paid within a year?

18 A We never had -- I never had discussions with Mr. Olsen or  
19 his bank. But it was our understanding that there were,  
20 obviously, crop insurance claims that had been filed.  
21 Mr. Bennett had been in touch on a -- had been in touch with a  
22 gentleman from -- I believe it was U.S. Bank that -- where  
23 Mr. Olsen was receiving his financing. And there had been  
24 discussion about refinancing or other methods by which the loan  
25 could be repaid.

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1 Q Okay. And you mentioned to the jury that, from a banking  
2 point of view, this was something that was carried on the books  
3 of Tri-Cities Produce. It was something that was fully  
4 disclosed and you were aware of --

5 A Yes, it was.

6 Q -- and the bank was aware of --

7 A Yes, we were.

8 Q -- at all times.

9 A Yes.

10 Q I want to ask you this, Mr. Heath: Can -- why, if you  
11 know, did Mr. Olsen's loans come to your attention? And, I  
12 guess, has -- is that related to any credit extended to  
13 Tri-Cities Produce? And maybe that's two questions. I'll just  
14 ask you the first one. Do you know why it came to your  
15 attention?

16 A I don't recall when the loan between Mr. Olsen and  
17 Tri-Cities Produce started, but it was always reflected on the  
18 balance sheet; and the owners of Tri-Cities Produce and the  
19 related entities always brought it up. You know, they --  
20 they -- they fully disclosed --

21 MR. ANDERSON: I'm going to object. Object as to  
22 hearsay, your Honor.

23 MR. VOVOS: It just goes to --

24 THE COURT: It's simply asked to understand what this  
25 person does. It's not offered for the truth. Go ahead.

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1 MR. VOVOS: Yes. It's not offered for the truth.

2 Q (BY MR. VOVOS) You were going to say it was never -- I  
3 believe you were interrupted before you gave your answer.

4 A I was just saying that we were made aware of it. It was  
5 always disclosed on the financial -- the loan to Mr. Olsen was  
6 always disclosed on the company's financial statements, and we  
7 discussed it. The owners -- I -- excuse me. The bank always  
8 discussed it or discussed it often with the owners, and we  
9 discussed often how that loan might be repaid.

10 Q Okay. And, were you aware, were there any efforts to try  
11 to get it repaid, just in a general sense?

12 A Yes, there were.

13 Q Okay. My -- the second part of the question I asked you,  
14 with the fact of that -- of that loan to Mr. Olsen, was it  
15 related, if can you tell the ladies and gentlemen of the jury,  
16 to any credit extended to TCP or to the related companies?

17 A No. The -- the loan to Mr. Olsen -- well, maybe I need you  
18 to clarify that. May I ask, are you asking if the loan was --  
19 if the loans we made to the company were, then, lent to  
20 Mr. Olsen? Is that what you're asking? I'm sorry. I don't  
21 understand the question. Perhaps, I don't --

22 Q Would you assume, if -- if there was money that was lent to  
23 Tri-Cities Produce or relate --

24 (Interruption by the reporter)

25 Q (BY MR. VOVOS) If there was money lent to Tri-Cities

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1 Produce and there was, essentially, credit being extended from  
2 Tri-Cities to Mr. Olsen, could some of that money from  
3 Washington Trust Bank have been used to do that?

4 A No.

5 Q All right. Did it affect or did it relate to the -- I  
6 guess, to the credit to Tri-Cities Produce or to the extended  
7 companies, though? I'm talking about the loan.

8 A Certainly, the bank looked at that loan receivable when we  
9 were analyzing the overall financial health of the companies,  
10 yes.

11 Q Okay. Counsel asked you about the factors and factors that  
12 you look at. Do you look at business history in a -- in a  
13 person that's borrowing money, business acumen, how they perform  
14 in business, business practices, and -- and the person  
15 themselves?

16 A Yes, absolutely.

17 Q And has that been something that you have done over the  
18 years, your bank has done over the years with Mr. Bennett and  
19 his partners, Mr. Krcma and Mr. Cox?

20 A Yes.

21 Q Counsel asked you about a business plan. Can you tell me,  
22 is there any requirement that any business plan be in writing or  
23 in a certain form or in a document that is written out?

24 A No. We have no formal policy for requiring a business  
25 plan.

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T. HEATH/REDI - VOVOS

1 Q Okay. Counsel asked you about the acquisition of TCP.

2 Were -- and I'll just ask you. Were you aware that what is now  
3 Tri-Cities Produce was an acquisition through the Small Business  
4 Administration, an SBA loan?

5 A Yes.

6 Q Okay. Counsel asked you, as far as Mr. Olsen and any  
7 involvement aside from this loan with Tri-Cities Produce, in the  
8 10, 12 years that this has been involved, do you have any  
9 information, knowledge of any ownership whatsoever on the part  
10 of Mr. Olsen in Tri-Cities Produce, directly or indirectly?

11 A No, sir.

12 Q You were asked about expansion. And I'll -- I'll just ask  
13 if -- if you know this from your personal experiences as -- as  
14 the banker. During 2002 or 2005, there were funds that were  
15 apparently used for expansion and improvement of Tri-Cities  
16 Produce.

17 A Yes.

18 Q Can you tell the jury if, in your consideration of loans to  
19 Tri-Cities Produce, you were aware of any payments or  
20 distributions to the partners of Tri-Cities Produce that would  
21 deplete that company in any way?

22 A All right. Can you clarify that, please?

23 Q Yeah. That's probably not a very good question. Were you  
24 aware of any payments to the partners as opposed to reinvestment  
25 in the company?

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1 A I don't recall. They took -- they all took salaries out of  
2 either that company or the related entities. But --

3 Q Nothing --

4 A Whether there were distributions in those years or not, I  
5 don't recall any.

6 Q All right. That's -- that's fine.

7 MR. VOVOS: I think that's all the questions I have.  
8 Thank you, Mr. Heath.

9 THE COURT: Mr. Bentley?  
10

11 RE CROSS EXAMINATION

12 RE CROSS BY MR. BENTLEY:

13 Q One more set of questions, Mr. Heath. Is it your  
14 understanding that Mr. Olsen, over the years, has been a major  
15 source of potatoes for Tri-Cities Produces' operations?

16 A Yes. I'm aware that he was a main source of potatoes.

17 Q And, from your understanding of the business model of  
18 Tri-Cities Produce, would you agree with me that, if they do not  
19 have a reliable source of potatoes, they cannot make money and  
20 your -- your loans to them, if you have any, are in jeopardy?

21 MR. ANDERSON: Objection. Leading.

22 THE COURT: Overruled.

23 THE WITNESS: Please restate the question. I got a  
24 little confused there.

25 Q (BY MR. BENTLEY) Would you agree with me that Tri-Cities

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1 Produce needs potatoes in order to make money?

2 A Yes. I would agree with you.

3 Q And, if they don't have potatoes, they're going to lose  
4 money --

5 A Yes, more than likely.

6 Q -- because of their fixed costs. Correct?

7 A More than likely.

8 Q And if they're losing money --

9 (Interruption by the reporter)

10 Q (BY MR. BENTLEY) Because of their fixed cost, if they do  
11 not have potatoes to move through their -- their system, they're  
12 going to be losing money. Correct?

13 A Yes.

14 Q And if Olsen -- and -- withdrawn.

15 Growing potatoes is a very expensive area of agriculture.

16 Is that correct?

17 A Yes, it is.

18 Q And, if Mr. Olsen failed and were no longer growing  
19 potatoes, wouldn't that negatively impact Tri-Cities Produce?

20 A Yes, because he supplied a lot of potatoes.

21 Q And would you agree that the loans to Mr. Olsen are,  
22 therefore, understandable in light of the business needs of  
23 Tri-Cities Produce?

24 A Yes.

25 MR. BENTLEY: Thank you.



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1 THE COURT: Is there recross examination?

2 MR. ANDERSON: No, your Honor.

3 THE COURT: Okay. Thank you for being here. You're  
4 excused. You may step down. Mr. Vovos?

5 MR. VOVOS: Yes, Judge.

6 THE COURT: Your next witness is?

7 MR. VOVOS: Alan Schlimmer.

8 THE COURT: Okay. Mr. Schlimmer. You're welcome to  
9 take a stretch if you need one.

10 (Witness enters courtroom)

11 THE COURT: Mr. Schlimmer, if you'll come here,  
12 please, to your right and to my left. Please, place your back  
13 to the door for the photograph for use by the jury during  
14 deliberations.

15 (Courtroom Deputy takes picture of the witness)

16 THE COURT: Please, raise your right hand.

17 (ALAN SCHLIMMER, called by the Defendant, was sworn)

18 THE COURT: Please, be seated. Tell us your first and  
19 your last name and, then, spell them both for the record. Thank  
20 you.

21 THE WITNESS: My first name is Alan. Last name,  
22 Schlimmer. A L A N. S C H L I M M E R.

23 THE COURT: Okay. S C H L I M M E R.

24 THE WITNESS: Correct.

25 THE COURT: Thank you.

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A. SCHLIMMER/DI - VOVOS

DIRECT EXAMINATION

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DIRECT BY MR. VOVOS:

Q I think it's important, Mr. Schlimmer, that you move a little closer to that microphone and make sure you speak so his Honor, Judge Shea, and all the members of the jury can hear you.

A Okay.

Q Okay? And counsel. Where do you live?

A I live in Warden, Washington.

Q Try to talk to the jury. Okay? And why don't you tell us about yourself. How long have you lived in our area?

A I've lived in Eastern Washington my entire life. I grew up in Odessa, small town about an hour-and-a-half north of here. And I farmed for a lot of years; and I'm a CPA, as well. And, as my CPA practice got busier and I had kids, I kind of phased out of the farming and let my brother handle that and concentrate on my accounting practice.

Q Okay. We're going to slow down. You've got a lot of answers to questions I -- I wanted to ask you a little bit. You do have farming experience --

A Yes.

Q -- then, I take it?

A Yes.

Q Let's start out -- where'd you go to high school?

A Odessa.

Q What -- what is your educational background, Mr. Schlimmer?

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A. SCHLIMMER/DI - VOVOS

1 A I went to high school in Odessa. I went to community  
2 college in Moses Lake for my first years of college education,  
3 and, then, I went to --

4 THE COURT: You need to just answer a little more  
5 slowly.

6 THE WITNESS: Slow. Sorry.

7 MR. VOVOS: That's okay.

8 THE COURT: We're trying to write down everything you  
9 say.

10 THE WITNESS: Oh, okay.

11 THE COURT: Thank you.

12 THE WITNESS: Sorry. And, then, I went to Eastern in  
13 Cheney to get my four-year degree.

14 Q (BY MR. VOVOS) Okay. And you have a four-year degree --

15 A Yes.

16 Q -- from Eastern Washington State University?

17 A Eastern Washington University, yes.

18 Q And tell the jury what the degree is in, please.

19 A It's in business administration accounting.

20 Q Okay. And, after you had that degree, did you get some  
21 additional education; or did you go to school to become an  
22 accountant?

23 A That's when I became an accountant. After I finished my  
24 four-year degree there, then that's when I took the exam and  
25 became a CPA.

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A. SCHLIMMER/DI - VOVOS

1 Q Okay. And will you tell the jury, when did you become a  
2 CPA?

3 A Back in 1991.

4 Q So that makes us -- here today you've been a CPA in the  
5 State of Washington for how long?

6 A Approximately 22 years.

7 Q Okay. Once you became a CPA, can you tell the jury, just  
8 generally with your experience and your background, what have  
9 you done as a CPA as it pertains to, let's say, businesses or  
10 individuals in your practice?

11 A My practice primarily is with small businesses, farmers,  
12 you know, local owners, things along that line. I primarily do  
13 tax -- tax return, tax planning, that type of stuff. Various  
14 entity planning. Things along that line for more small  
15 businesses than -- than large businesses. I don't do auditing.  
16 Things along that line.

17 (Interruption by the reporter)

18 THE WITNESS: I don't do auditing. I'm sorry.

19 Q (BY MR. VOVOS) Your voice sort of tails off there, and I  
20 know -- I know that --

21 A I'm just getting over a chest cold. Sorry.

22 Q I got it. I got it. What does your family consist of,  
23 Mr. Schlimmer?

24 A At this time, I have, let's see, three teenagers; and I  
25 have a baby girl who's going to be seven months here in a couple

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1 days. So --

2 Q Seven months. Congratulations.

3 A Thanks.

4 Q Okay. Okay. Your experience. Who did you go to work for  
5 when you first became a CPA? I'd like to just go through your  
6 experience in that regard.

7 A Okay. When I first graduated from college, I was living in  
8 Odessa, still farming; and I went to work for a local firm there  
9 for about a year. And, then, I -- when I kind of phased out of  
10 farming, I moved to a different firm down in Moses Lake; and  
11 that's where I've been since that point in time.

12 Q Okay. What is the company that you -- that you work for at  
13 the present time?

14 A The name is J.R. Newhouse & Company.

15 Q And are -- are they certain types of accountants or what do  
16 they do or do they specialize in anything?

17 A We're a general certified public accounting firm. Like I  
18 said, we primarily deal with small businesses, family owned  
19 businesses.

20 Q Do you know the owners of Tri-Cities Produce?

21 A Yes, I do.

22 Q And how -- how long have you been acquainted with them?

23 A I've known them for at least, probably, 20 years.

24 Q And that includes Mr. Bennett and his wife, Janet?

25 A Correct. Yes. I've known his wife, actually, since --

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1 since high school. She grew up in a town about 30 miles south  
2 of Odessa. So I've known her and her family since I was in high  
3 school.

4 Q Okay. And can you tell the jury what position or what work  
5 you have done for Tri-Cities Produce?

6 A Basically, I'm their CPA. I prepare year-end adjusting  
7 entries to help them get their books all adjusted at year end;  
8 and, then, I prepare tax return --

9 THE COURT: No, I think you need to just -- you need  
10 breakup your questions so that he can answer in a short way  
11 because he speaks pretty quickly.

12 Q (BY MR. VOVOS) That's okay. It's pretty hard on the  
13 stand. Take a breath and, then, I'll -- it's probably my fault.  
14 I'm -- I'm gonna try to ask slow questions. Okay?

15 A Okay.

16 Q Okay.

17 THE COURT: Start again.

18 MR. VOVOS: I'm going to. I'm just trying to remember  
19 where I was, Judge.

20 THE COURT: Okay. You asked him --

21 MR. VOVOS: I know --

22 THE COURT: -- what work he did for Tri-Cities  
23 Produce.

24 MR. VOVOS: Yeah.

25 THE COURT: And he's going to tell us now, in speaking

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1 slowly, what work he did for Tri-Cities Produce.

2 THE WITNESS: Sorry, about that. Basically, what I do  
3 at year end, after they've got their books pretty well put  
4 together to where they feel they're as done as they can get them  
5 done for bookkeeping goes, then they contact me. I come down.  
6 We help them get the final year end, anything they have  
7 questions on. We prepare a depreciation schedule based on  
8 assets that they bought, assets they may have sold, prepare that  
9 for them, help them make those adjusting journal entries. And,  
10 then, after that's all done, we, basically, prepare the tax  
11 return for the businesses.

12 Q (BY MR. VOVOS) Do you review the books of Tri-Cities  
13 Produce?

14 A I look at accounts that -- that are brought up either  
15 between Mr. Bennett and myself; or if there's accounts that have  
16 had big changes or if something jumps out at me, then I ask  
17 further questions. But, as far as, you know, like I said  
18 before, I don't audit. So, no, I'm not digging deep into  
19 anything; but just the general year end -- year-end adjustments.

20 Q Okay. Can you tell the jury, do you meet with the other  
21 partners annually concerning the financial status of the  
22 business?

23 A As a general rule, yes, we do; and that's been that way  
24 from day one. Blake's always encouraged that: To have me,  
25 actually, after we're done with the year end, to meet with his

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1 other partners; explain any questions they have; explain how the  
2 company did for the year; how it affects their tax returns; all  
3 those kind of issues; and, any questions they have. We meet on  
4 a separate basis from Blake in case they have any questions they  
5 want to go over.

6 Q I want to ask you about Marta Sowers. Can you tell the  
7 jury, do you know her?

8 A Yes, I do.

9 Q And can you just briefly explain your actions or  
10 interactions with her at Tri-Cities Produce?

11 A Marta is, basically, the in-house bookkeeper, comptroller.  
12 She -- like I said, she's usually the one that contacts me and  
13 says, "I've got things as well as I can get them done for year  
14 end." She reconciles most of the accounts on the balance sheet  
15 and ties them to an outside source. And, when she's gotten as  
16 far as she can with the books, that's when she calls me; and I  
17 come in and help her deal with the last final adjustments that  
18 need to be done for year end.

19 Q Okay. And can you tell the jury, did you know a Hildred  
20 Nielsen, a person who was there at the same time Marta was?

21 A I knew her. I dealt with her for maybe a year, maybe two  
22 years before Marta took over as full time.

23 Q Okay. I believe her name has changed now, but you knew her  
24 as Hildred Nielsen?

25 A That -- I believe so.



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1 Q All right. In -- in your capacity as the CPA, can you  
2 state whether or not Tri-Cities Produce has ever audited by the  
3 State or if there's been any audits that -- that have been done  
4 in -- in the company?

5 A Yes. I believe --

6 MR. ANDERSON: Objection as to relevance.

7 MR. VOVOS: It states what -- it just has to do with  
8 his experience as far as the books and the financial  
9 transactions that he deals --

10 THE COURT: Just a simple context for background.  
11 I'll permit that.

12 Q (BY MR. VOVOS) Yes. Just a simple contract -- context is  
13 what I'm saying. Have you participated in financial audits by  
14 the State in a general sense?

15 A Correct. The Department of Revenue, I believe, has audited  
16 them a couple of times since I've been doing their work.

17 Q Okay. And can you state the results of those audits?  
18 Everything was --

19 A One, I believe, was what we call --

20 (Interruption by the reporter)

21 Q (BY MR. VOVOS) Yes. Any results of the audits?

22 MR. ANDERSON: Your Honor, I'm going to object, again,  
23 as to relevance.

24 THE COURT: Overruled.

25 Q (BY MR. VOVOS) You can state what the results are.

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1 A I believe, one, they got a small refund because they were  
2 paying, what we call, business and occupation tax. It's a tax  
3 to the State. They were overpaying on that, and they got a  
4 refund.

5 And, then, I believe the second one was, what we call, a no  
6 change. It means the auditor found no adjustments that needed  
7 to be made to -- to their books and records.

8 THE COURT: Mr. Schlimmer, I think you're doing better  
9 with your answers. I think you're keeping in mind that the  
10 court reporter is writing down everything you say.

11 THE WITNESS: Okay.

12 THE COURT: And I want to congratulate you on the  
13 progress you're making. So --

14 THE WITNESS: Thank you. Slow me down if you need to.  
15 I'm sorry.

16 (Interruption by the reporter)

17 THE WITNESS: Okay. Perfect.

18 MR. VOVOS: She will.

19 Q (BY MR. VOVOS) So I want to ask you -- try to get a tempo  
20 here -- about, in your actions with Tri-Cities Produce, are you  
21 aware of what Famous is as it pertains to the books and the  
22 accounts at Tri-Cities Produce?

23 A Yes, I am. Famous is the --

24 Q Okay. I was going to ask another -- I was gonna break it  
25 down. And can you just basically explain Famous and your

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1 workings with Famous, please.

2 A Famous is, basically, the software program that the company  
3 uses to account for its books and records. It's a pretty  
4 intense program because it does all the -- the detailed general  
5 ledgers, the trial balances, balance sheets, profit and losses,  
6 all the reports that I use to prepare the tax returns.

7 And I believe it also --

8 THE COURT: That's enough of an answer. Ask another  
9 question.

10 MR. VOVOS: Okay.

11 Q (BY MR. VOVOS) Okay. Are you familiar enough with Famous  
12 to know if -- if the system has ever been changed or has there  
13 ever been an update from one version of Famous to another  
14 version of the Famous?

15 A Yes, I believe so. It's like any software. It's updated,  
16 improved, additional features are added.

17 Q And, if you know, as -- as a CPA and the accountant, is  
18 Famous able to be deleted or erased or is everything maintained  
19 on that system?

20 A As far as the program itself?

21 Q Yeah, as far as the program, as far as what's entered.

22 A Well, Famous is --

23 THE COURT: Excuse me, Counsel. Are you asking him --  
24 I don't think you're asking him a programming-level question.  
25 You're asking him about the accounting software, itself. Is

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1 that right?

2 MR. VOVOS: The accounting software.

3 THE WITNESS: You're asking about transactions inside  
4 the software?

5 THE COURT: Yes.

6 Q (BY MR. VOVOS) Yes, I am. Yes.

7 A Famous is -- like I said before, it's a very high-level  
8 software. It's not like your simple QuickBooks or Quicken  
9 programs where you can enter a transaction. If you find out  
10 later something needs to be change, you can go back in and  
11 change it to -- to where it should be.

12 This is something that, once you've entered a transaction,  
13 to move it from one account to a different account, you actually  
14 have to do a second transaction and post it so it is moved to  
15 the correct account.

16 Q Okay. In -- in that regard, we've heard the term in this  
17 courtroom called "double entry" procedures. Do you -- can you  
18 explain that?

19 A That's an accounting -- accounting term, basically. And,  
20 as far as explaining goes, are you talking about accounting as a  
21 double entry or double entry into accounts in the system?

22 Q Yeah, just into accounts in the system. I mean, is that  
23 something that Tri-Cities Produce has as far as entering in,  
24 say, a temporary account and, then, moving it somewhere else?

25 A Yes. And that's what I was explaining earlier is, if you

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1 enter a transaction into -- let's say you want to post a check  
2 and you want to post it to repairs, you would make that. That's  
3 your first entry. You find out later it needs to go into  
4 supplies, for instance, you couldn't just move that entry from  
5 repairs into supplies. You'd actually have to do a second entry  
6 which would take it out of repairs and, then, post it over into  
7 the supplies.

8 Q All right. Do you know, Mr. Schlimmer, in the general  
9 ledger of Tri-Cities Produce, how big is that document, just in  
10 a general sense for the jury? The -- the whole general ledger.

11 A The general ledger? Are we talking about detailed general  
12 ledger or a summary general ledger because there's a difference?

13 Q Okay. How about detailed summary?

14 A Oh, I'm -- detailed, probably, I'm assuming, would be  
15 thousands of pages.

16 Q How about the other part of it?

17 A A summary, which is basically what I refer to there is the  
18 accounts with just the year-end total balances for the year  
19 without the detail, is five, six pages.

20 Q Okay. Can you state how many different accounts there are,  
21 if you know, in the general ledger of Tri-Cities Produce?

22 A I believe, the last time I talked to Marta, there's 115,  
23 120 different accounts in that system.

24 Q Are you aware of any loans to Lynn Olsen or to Olsen  
25 Agriprises as far as Tri-Cities Produce is concerned?

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1 A Yes.

2 Q And can you tell the jury how -- how you became aware of  
3 them?

4 A I became aware of them when Mr. Bennett told me about them,  
5 and they're also a separate line item on this general ledger  
6 that we're talking about.

7 Q When you say, "a separate line item," can you explain what  
8 that means?

9 A Okay. The report that that shows up on is what's called a  
10 "balance sheet." It starts out with your cash and checking,  
11 those type of accounts, your receivables, your inventory, and,  
12 then, we go to what we call "other assets," which would be, for  
13 instance, this loan to Lynn Olsen.

14 (Interruption by the reporter)

15 THE WITNESS: Lynn Olsen. Okay.

16 Q (BY MR. VOVOS) Can you state -- can you tell the jury how  
17 long this loan account for Lynn Olsen has been in existence to  
18 the best of your knowledge?

19 A On the books and records of the company?

20 Q Yes. I'm talking about Tri-Cities Produce.

21 A From the very beginning from when they first started  
22 loaning him funds.

23 Q And is it -- can you tell the jury is it an item that is  
24 reflected in the financial statements of Tri-Cities Produce?

25 A Yes. Like I said, it's a separate line item on the -- on

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1 the balance sheet of the company.

2 Q And is it something that's reflected in the documents that  
3 a bank would look at?

4 A Absolutely.

5 Q And is it reflected, in a general sense, on the federal  
6 income tax returns that are filed?

7 A I believe so, yes.

8 Q Are you able to look at the books and determine money or  
9 gross revenues that are made by Tri-Cities Produce as far as  
10 contracts or items from what is contained on Famous? Or I'm  
11 just going to refer to what the books are.

12 A Yes. On -- on -- now we're to a different report, which is  
13 called a "profit and loss," which shows your income and your  
14 expense items. There are also separate line items on there for  
15 contract income and contract expenses or the costs of goods sold  
16 related to that income. Those are both separate line items on  
17 that report.

18 Q In this case, the case that we're in court about, we're  
19 talking about contracts from the year 2001 through the year  
20 2004, 5. Are you -- are you familiar with that in a general  
21 sense?

22 A Yes.

23 Q From the books at Tri-Cities Produce, can you tell this  
24 jury whether or not Tri-Cities Produce made any money on those  
25 contracts?

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1 A In summary or --

2 Q Just -- just in summary.

3 A In summary, no. Over the four-year period we're looking at  
4 here, they broke even at best and -- and looks like they lost a  
5 small amount over the four-year period.

6 MR. SCHWARTZ: I'm sorry, your Honor. I couldn't hear  
7 the last part of the answer. Could I get that again?

8 THE COURT: He said that it looks like they lost a  
9 small amount over the four-year period, broke even at best.

10 MR. SCHWARTZ: Thank you.

11 Q (BY MR. VOVOS) Can you state whether or not, if -- if you  
12 know, whether or not there are any storage costs in relation to  
13 those contracts that are reflected that are -- are -- are paid  
14 by Tri-Cities Produce?

15 A Yes, there are. Tri-Cities Produce pays for the storage  
16 associated with the potatoes they have under contract.

17 MR. VOVOS: All right. I think that's all the  
18 questions I have at this time, Mr. Schlimmer. There will be  
19 other questions.

20 THE WITNESS: Thank you.

21 THE COURT: Thank you. Are there other questions from  
22 anyone? Mr. Johnston? Okay.

23

24 / / / / /

25 / / / / /



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1 CROSS EXAMINATION

2 CROSS BY MR. JOHNSTON:

3 Q Morning, Mr. Schlimmer. I'll ask you some brief but slow  
4 questions.

5 A Okay.

6 Q As a certified public accountant, in addition to taking the  
7 test, did you have to also have some experience requirements  
8 before getting licensed?

9 A Yes. There is a year experience requirement before you  
10 actually become a formal CPA and have your actual license.

11 Q And, even though you don't do audits, the test covers, in  
12 detail, auditing. Correct?

13 A I don't know if I would use the word "in detail," but there  
14 are auditing questions, auditing topics on the test, yes.

15 Q Now, when you -- did you also prepare financial statements,  
16 that is, of balance sheet and income statement that bore the  
17 representation of your company for Tri-Cities Produce?

18 A For which years are we talking?

19 Q Let's -- in the 2001-2004 time frame.

20 A I don't believe so, but I don't recall. I don't have files  
21 back that far. As a general rule, no, we don't.

22 Q All right. And -- and are there several types of financial  
23 statements? There's a compilation. Is that right?

24 A Correct.

25 Q Did you ever do a compilation for Tri-Cities Produce?

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1 A Not to my recollection, no.

2 Q In performing your duties, though, as an accountant, you're  
3 governed, generally, by the precepts of the AICPA?

4 A Correct.

5 Q And, in regard to that, did you advise the company  
6 regarding the adequacy, for example, of its controls?

7 A No. I was never asked to perform those duties.

8 Q In regard to the Famous system, isn't that a system  
9 designed to have controls sufficient for -- to support either  
10 review or compilation statements?

11 A That would be part of it. Like I explained earlier,  
12 that -- the fact that you can't go in and change entries is one  
13 of the control features that is built into that program.

14 Q And is the availability and use of that system one of the  
15 reasons it was unnecessary to have you do a second review or  
16 compilation?

17 A That's correct.

18 Q And did you understand, when you prepared your financial  
19 statements for TCP, that they would, in fact, be given to  
20 financial institutions to rely upon?

21 A Prepared financial statements or tax returns?

22 Q Well, tax returns.

23 A Tax returns, yes. I knew they were going to be going to  
24 the bank, yes.

25 Q And the tax return does include a balance sheet, as I

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1 recall?

2 A Correct.

3 Q I can't remember which schedule, but --

4 A Correct.

5 Q And the loans to Olsen were reflected separately thereon.

6 A I believe so, yes.

7 Q Now, you indicated that you did a year-end review to do  
8 year-end journal entries. Did I understand that correctly?

9 A Correct.

10 Q And is that the process where you review the accounts to  
11 make sure they're in the right categories for tax and other  
12 reporting purposes?

13 A That's part of it. It's more looking at the documents that  
14 Marta would put together. And, you know, she would obviously  
15 reconcile the bank. And, so, I would check the bank balance on  
16 their books with her reconciliation report and things along that  
17 to make sure that nothing jumped out at me that was off. But,  
18 as far as the word "review," going in and looking at a lot of  
19 detail, no.

20 Q In terms of the bank accounts, the reconciliation means  
21 that every payment of money into the company's bank accounts and  
22 out of the company's bank accounts is reflected. And you can  
23 tell me whether it's not in the Famous system. Is that right?

24 A Well, no. The bank reconciliation I'm talking about is she  
25 would take a copy -- make me a copy of the December bank

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1 statement and, then, do a reconciliation showing any outstanding  
2 items that hadn't cleared yet on the bank statement.

3 Q Did you also reconcile it one way or the other with the  
4 Famous system balances?

5 A That was already done by Marta, yes. And I just verified  
6 the balances with her work papers to show that they were the  
7 same.

8 MR. JOHNSTON: Thank you very much, Mr. Schlimmer.  
9 That's all I have.

10 THE WITNESS: Thank you.

11 THE COURT: Anyone else on the defense? No? Cross  
12 examination, Mr. Anderson?

13

14 CROSS EXAMINATION

15 CROSS BY MR. ANDERSON:

16 Q Good morning, Mr. Schlimmer.

17 A Good morning.

18 Q The Famous system. That's relied on quite a bit by  
19 Tri-Cities Produce?

20 A Yes.

21 Q I heard you say it pretty much runs the business?

22 A No, it doesn't run the business. I said it's a pretty  
23 intense program that has a lot of safeguards built into the  
24 system.

25 Q But, yet, the integrity of that system, as far as

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1 recordkeeping system, does it rely on the accuracy of the  
2 information that goes into it?

3 A Any -- any accounting system does, yes.

4 Q And you mention that it does categorize certain loans that  
5 were made to Mr. Olsen. It does contain evidence of loans made  
6 to Olsen?

7 A Yes, it does.

8 Q Okay. And how are those placed into the Famous system?

9 A Those -- they set up that account when they originally  
10 started loaning him funds. And, then, those funds -- any loans  
11 were applied and taken in and out of that loan account that was  
12 a separate line item on the balance sheet.

13 Q How would you describe that account, itself, on a balance  
14 sheet?

15 A As far as what type of account it is or --

16 Q Type of account.

17 A We would call it an "other asset."

18 Q Okay. How would that be entered differently -- so it was  
19 entered as a loan. How would it be different from, say, a  
20 payment directly to a grower, like, Mr. Olsen? How would that  
21 be accounted for?

22 A A -- a payment to a grower would be in the cost of goods  
23 sold or the contract expense that there was a separate line  
24 item, and that's on a different report called the "profit and  
25 loss" because that's an expense account.

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1 Q Okay. The loan, itself, would be a note receivable? Is  
2 that right?

3 A Correct.

4 Q Well, what's the difference between that and, say, an  
5 account receivable?

6 A Account receivable is something that, if you're doing  
7 transactions with your ordinary customers and they charge  
8 something, that's something that they owe you for. The services  
9 or the product that you sold them, and they just haven't paid  
10 you yet. Versus this. This is an actual lending transaction.  
11 We're actually loaning them funds versus selling them a -- a  
12 product or a service.

13 Q Are both of those considered assets of the business?

14 A Yes.

15 Q And they both show up in the balance sheet?

16 A Correct.

17 Q Would you say one's a longer term or shorter term than the  
18 other?

19 A Yes.

20 Q And can you describe what you mean by that?

21 A That's why I said it's an "other asset." Generally in  
22 accounts receivable is what we call a "current asset," which,  
23 basically, in simple terms, means you expect to receive that  
24 money that a customer owes you in the near future. An "other  
25 asset" is something that could be more of a long-term

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1 transaction versus just a 30-day or 60-day transaction.

2 Q In both of those types of methods of accounting, you  
3 anticipate some sort of a collection on those accounts?

4 A Yes.

5 Q What happens if you have a note receivable and it's not  
6 collected? How does that change that entry or the  
7 categorization?

8 A Once it's determined it may or may not be collectible, then  
9 you have to look at writing it off as what we call "bad debt."

10 Q And how do you do that?

11 A That's determined by management on whether they think they  
12 can collect it or not.

13 Q And, with regards to an account receivable, what happens  
14 when that becomes uncollectible?

15 A An accounts receivable? It depends on the company's  
16 policy. Sometimes they're turned over to collection. I mean,  
17 there's lots of options. Sometimes they're written off, as  
18 well.

19 Q Okay. And you said you're familiar with the contracts that  
20 are at issue in this case? The contracts between the growers  
21 and Tri-Cities Produce?

22 A I knew there were contracts. As far as contract law, no,  
23 I'm not an attorney.

24 Q No. I'm not going to ask you that.

25 A Okay.

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1 Q But, as far as the financial side, I believe you testified  
2 that Tri-Cities Produce broke even at best.

3 A Um-hum.

4 Q Were you aware of Mr. Bennett being asked if he made any  
5 money on these contracts? And, in fact, he said -- or confirmed  
6 that he made a pile of money on them. Are you aware of that?

7 MR. VOVOS: Judge, I object. It's a confusing  
8 question. What -- what year? I think Counsel should --

9 THE COURT: It depends on the year.

10 MR. VOVOS: -- what year.

11 THE COURT: And you're using plural. And I think we  
12 need to make sure that we establish here with this witness, when  
13 he's asked about 2001 and 2004, whether we're talking about the  
14 overall operation of TCP during those years or these contracts,  
15 if they're broken out. And I'm uncertain that that was clear.

16 Q (BY MR. ANDERSON) If I could ask more specifically as it  
17 relates to these contracts for 2001 and 2002, are you aware of  
18 Tri-Cities Produce making money on these contracts?

19 A Yes. I believe they made money in 2001 and a little bit of  
20 money in 2002.

21 Q All right. You also mention that you review the books of  
22 Tri-Cities Produce annually?

23 A Yes. That's part of that year-end process where I meet  
24 with Marta and go through and -- and do our year-end  
25 adjustments, yes.



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1 Q Describe exactly what you do during that process.

2 A Basically, like I said earlier, she usually has the general  
3 ledger tied down as best she can to -- and reconciled at year  
4 end. She has a printout for me --

5 (Interruption by the reporter)

6 THE WITNESS: Okay. Sorry. She has the general  
7 ledger printed out for me. The balances on those accounts that  
8 she can reconcile, there again, with an outside source, i.e.,  
9 the bank reconciliation. She'll have all those ready for me. I  
10 go down through the accounts with her and help her adjust any  
11 accounts that she may not know how to adjust. Or, like I said,  
12 and the biggest -- most amount of time is spent on depreciation  
13 schedules. The new equipment that they buy. She doesn't know  
14 how to calculate how much depreciation you take, things along  
15 that line. So I help her with those adjusting entries.

16 Q (BY MR. ANDERSON) And you're not going back and adjusting  
17 entries on the Famous system, itself?

18 A No. I -- to my knowledge, I have never ever made an entry  
19 in their actual system. That's something Marta does.

20 Q And you don't modify that at all at the end of the year  
21 during your review at all?

22 A Modify what?

23 Q Modify. You don't change the entries at all?

24 A You can't change the entries in the system.

25 Q You can't change them.

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1 A Right.

2 Q You'd have to do another entry, in effect, to cancel that  
3 out?

4 A Correct. Correct.

5 Q But you rely on the entries that are preexisting in doing  
6 your review. Is that correct?

7 A Exactly.

8 Q Would you ever have occasion to verify the amounts  
9 Mr. Olsen owed to Tri-Cities Produce?

10 A As far as -- verify as in confirm the numbers or confirm  
11 with --

12 Q Confirm the basis --

13 A -- with Lynn or --

14 Q Confirm the basis for the loans. Is that something that  
15 you would do?

16 A No.

17 Q Okay. Would you confirm the amounts that were owed to  
18 Tri-Cities Produce from Mr. Olsen?

19 A No.

20 Q Okay. And, if you didn't do that, who else would?

21 A That would be basically Marta and Blake. They would have a  
22 detailed transaction report of what transactions went in and out  
23 of that account during the year.

24 MR. ANDERSON: I have no other questions.

25 THE COURT: Do you have any for recross?

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1 MR. VOVOS: Yes I do, Judge.

2 THE COURT: Okay.

3

4 REDIRECT EXAMINATION

5 REDIRECT BY MR. VOVOS:

6 Q Counsel asked you about writing off a bad debt. I want to  
7 ask you: In your capacity as the accountant for Tri-Cities  
8 Produce, is there any plan or any knowledge or ever been any  
9 discussion about writing Lynn Olsen's debt off as a bad debt?

10 A There's been discussion. Obviously, as the outside  
11 accountant, I talk and discuss this matter with Blake every  
12 year. But, no, that has not -- no write off to my knowledge and  
13 no plans for any write offs to my knowledge.

14 Q All right. Counsel asked you in relation to Tri-Cities  
15 Produce and making money on these contracts of 2000 through  
16 2004. I think he went through 2001 and 2002. And you said they  
17 made money in 2001 and 2002. Tell the jury what happened in  
18 2003 and 2004.

19 A In 2003, basically, they had a small loss on those  
20 contracts. In 2004, they basically got hampered hard and had a  
21 huge loss on those contracts.

22 Q All right. And is that the reason for your statement that  
23 they broke even or less than broke even?

24 A Correct. So, when you add up those four years, there's two  
25 years of positive, two years of negative. It comes out to a

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1 small negative figure.

2 Q All right. Were you aware, in your position as a certified  
3 public accountant, of any efforts on the part of Tri-Cities  
4 Produce and its partners or management to collect this money  
5 from Mr. Olsen?

6 A I believe there were some --

7 Q You just need to answer --

8 A Yes.

9 Q -- if there were. All right. Just overall, Mr. Schlimmer,  
10 can you tell the jury, the books at Tri-Cities Produce, based on  
11 your experience and your background during the time that you've  
12 been there, are they kept reasonably in accordance with  
13 generally accepted accounting procedures?

14 A Yes, absolutely. For a company of this size with this many  
15 transactions, it's probably one of my clients that have the  
16 fewest numbers of adjusting entries that I have to make at year  
17 end. So they do a very good job of tracking their -- their  
18 transactions.

19 MR. VOVOS: That's -- that's all. Thank you very  
20 much.

21 THE WITNESS: Thank you.

22 MR. SCHWARTZ: Your Honor, could I have just a second  
23 with Mr. Vovos?

24 THE COURT: Sure.

25 (Discussion off the record)

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1 MR. SCHWARTZ: Thank you, your Honor.

2 THE COURT: Okay. On that point, do you have some  
3 other questions?

4 MR. ANDERSON: I just have a few, your Honor.

5

6 RE CROSS EXAMINATION

7 RE CROSS BY MR. ANDERSON:

8 Q When you talk about writing off a bad debt, what do you  
9 mean by that, the concept of "writing off"?

10 A When you have a receivable, whether it be a loan or  
11 accounts receivable, it's something you have on your books that  
12 people owe you that money. To get it off your books, you move  
13 it you out of that account into what we call "bad debt expense."  
14 And, then, you would deduct it if you determine that it's not a  
15 collectible account.

16 Q And, going through that, when you deduct it, what happens  
17 then? What's -- what's the effect of that --

18 (Interruption by the reporter)

19 Q (BY MR. ANDERSON) When you would, then, deduct -- when  
20 would you deduct it, what would be the effect of that?

21 A The effect of that is you would have a deduction on your  
22 tax return, which would bring down your income.

23 Q Okay. Which would, in turn, bring down your taxes, as  
24 well? Or could?

25 A Correct.

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1 Q And, with regard to writing off a bad debt, what would you  
2 expect to be written off sooner, a note receivable or an  
3 accounts receivable?

4 A There's no way to determine that. You'd have to look at  
5 each of those accounts on a separate basis to determine that.

6 Q Well, one is longer term and one is shorter term. Does  
7 that --

8 A That really doesn't have anything to with whether it's  
9 collectible or not --

10 Q Okay.

11 A -- or whether the management decides they need to write it  
12 off.

13 Q Would one be more likely to be written off sooner?

14 A Not necessarily, no.

15 Q And why is that --

16 (Interruption by the reporter)

17 Q (BY MR. ANDERSON) Would one be more likely to be written  
18 off sooner versus later?

19 A No. And -- and, therefore, the same reason. You don't  
20 know. Somebody could come and charge something in your store,  
21 for instance, and leave town. How are you going to collect  
22 that? It may only be two days old and be a bad debt. I mean,  
23 there's no way of determining that.

24 Q What would that be? Would that be an accounts receivable?

25 A That would generally be an accounts receivable if they came

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1 in your store and bought -- bought a product or something from  
2 you, yes.

3 Q And, then, what would be a notes receivable?

4 A Notes receivable would be something where you would loan  
5 somebody some money.

6 Q Perhaps on a more longer-term basis?

7 A Correct.

8 Q Okay. You said 2004, in particular, Tri-Cities Produce  
9 took a huge loss in the contracts?

10 A Correct.

11 Q Is that right? Have you had occasion to review the packout  
12 sheets from those years?

13 A I believe so, yes. I looked at lots of packout sheets.

14 Q Do you recall when you did that?

15 A Oh, that's been pushing two years ago now.

16 Q Okay.

17 MR. ANDERSON: I have no other questions.

18 MR. VOVOS: Within the scope, Judge, if I could?

19 THE COURT: Sure. You've got four minutes before noon  
20 time.

21 MR. VOVOS: Get it done the best I can.

22

23 FURTHER REDIRECT EXAMINATION

24 FURTHER REDIRECT BY MR. VOVOS:

25 Q Counsel's talking about the amount. I want you to keep in

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1 mind the amount of indebtedness that's owed to Tri-Cities  
2 Produce.

3 A Correct.

4 Q Tell the jury what accounting basis or tax basis they have.  
5 Is it cash or accrual?

6 A Accrual.

7 Q If Tri-Cities Produce, considering the amount of that loan  
8 that the bank knew about, you knew about, everybody knew about  
9 -- if they charged interest on that note -- are you with me?

10 A Um-hum.

11 Q What would happen to their tax obligation?

12 A If they accrued interest on it?

13 Q Yes.

14 A Or charged interest?

15 Q If they -- if they charged interest on that amount of  
16 money, what would happen to Tri-Cities' tax obligation?

17 A It would increase because you would have some interest  
18 income on your books.

19 MR. VOVOS: Thank you.

20 THE WITNESS: Um-hum.

21 THE COURT: Mr. Anderson?

22 MR. ANDERSON: I have nothing further, your Honor.

23 THE COURT: Okay. Thank you. Mr. Schlimmer, thanks  
24 for being here. You're excused. You may step down.

25 THE WITNESS: Thank you.



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1 THE COURT: And I appreciate your slowing down.

2 THE WITNESS: Thank you.

3 THE COURT: Okay. Ladies and gentlemen, I need a  
4 minute or two with the lawyers. So I'm going to give you lunch  
5 and see you back here at 1:30. Thanks.

6 (Jury out at 11:59 a.m.)

7 THE COURT: Please, be seated. Okay. Folks, bring me  
8 up to date on what the afternoon looks like.

9 MR. BENTLEY: Well, your Honor, I would like to  
10 entreat Mr. Tornabene on that one witness. But, passing that,  
11 we would intend to call Stewart Turner, an expert.

12 THE COURT: All right. Well, then, that will take up  
13 our afternoon. I'll let you folks work out the Sackmann issue.  
14 And what is Mr. Sackmann going to testify to? He's an attorney  
15 up in --

16 MR. BENTLEY: He's in Othello. He's down here from  
17 Othello. He represented Mr. Olsen in a Chapter 11 bankruptcy  
18 filed in '99, and he'll talk about Mr. Olsen's financial straits  
19 in -- in the late '90s to provide a basis for Mr. Olsen's  
20 willingness to enter into these contracts.

21 THE COURT: Okay. That said, I'll let you folks work  
22 that out. Do we have document issues on Sackmann if he's --

23 MR. BENTLEY: And I apologize to everyone. I really  
24 take it seriously. I don't want to put Mr. Tornabene in a bad  
25 place, but I have no documents with Mr. Sackmann; and I think

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1 his testimony will be quite brief.

2 MR. TORNABENE: I'll confer with counsel.

3 THE COURT: Good. Thanks, folks. See you at 1:20ish  
4 to make sure we don't have issues.

5 (Court recessed at 12:01 p.m.)

6 (Court reconvened at 1:28 p.m.)

7 THE COURT: Please, be seated. Five minutes without  
8 jury. What do we have? Somebody needed some without-jury time?  
9 Mr. Anderson, I thought I was just talking to myself here for a  
10 few minutes; but at least I had that message. So tell me what  
11 we have.

12 MR. ANDERSON: Well, just some upcoming exhibits to be  
13 offered through defense witnesses. One, in particular, through  
14 a Mr. Jeff Smith. It's an Exhibit 3109 entitled Washington  
15 State Fruit and Vegetable Inspection Program and a multipage  
16 document. I haven't finished printing it off. How many pages?  
17 118 pages and I just don't see that it has any relevance in this  
18 case.

19 THE COURT: And who marked -- is it Exhibit 310 --

20 MR. ANDERSON: 3109, your Honor.

21 THE COURT: Jeff Smith?

22 MR. ANDERSON: Right. That's what --

23 THE COURT: I don't think anybody on the defense  
24 intends to use it because nobody's responding. So I'm  
25 assuming --

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1 MR. VOVOS: Oh, I'm the one that marked it.

2 THE COURT: Do you want to explain why we're having  
3 this exhibit?

4 MR. VOVOS: Judge, it's an exhibit from the Washington  
5 State Department of Agriculture, which is the handbook for  
6 safety and inspection of potatoes that's used by Tri-Cities  
7 Produce after the potatoes are run through the processing at  
8 Tri-Cities Produce after they've been inspected by the United  
9 States Department of Agriculture. And it's all the standards  
10 that Washington State imposes on Tri-Cities Produce. And, in  
11 fact, we have a witness who's just going to identify it.  
12 Whether it comes in substantively, it's just a -- it's a book  
13 and a manual of all of the safety standards, inspections, and  
14 the requirements of the State.

15 THE COURT: So you're calling a witness to simply say  
16 that's -- that's the book of the State of Washington?

17 MR. VOVOS: It's the book of the State of Washington  
18 that pertains to safety, specifications, standards of -- of  
19 potatoes. The grading of potatoes. 1's -- 1's and 2's and how  
20 they're packed and all of the rules and regulations pertaining  
21 to potatoes.

22 THE COURT: And how do they -- how do those things  
23 relate to this case?

24 MR. VOVOS: Well, it has to do how the potatoes are --  
25 in the overall scheme of things, how they're packed, how they're

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1 processed, how they're run, how they're boxed. And it just  
2 shows a -- an example of all of the requirements of the State  
3 for the inspection of potatoes. It's not just something that  
4 anybody can do. Licensed by the State, and it's an illustrative  
5 exhibit. And I marked it in an abundance of caution with the  
6 Court saying that --

7 MR. ANDERSON: The inspection of potatoes under State  
8 program was not part of the Government's case. All the evidence  
9 that came in had to do with Ag World inspection. That was a  
10 private entity. So we just don't see that -- how this could  
11 possibly have any relevance, especially, you know, that large of  
12 a document.

13 THE COURT: Well, it's immaterial to me the length. I  
14 mean, sometimes I get concerned that documents are identified  
15 for one discrete purpose. And, in an abundance of diligence,  
16 counsel identify the entire document only to plant something in  
17 there that catches some juror's mind that's completely  
18 unintended; and now we have a major problem on our hands. And,  
19 so, I'm always concerned about the -- about lengthy documents.

20 In this case, I just don't see the relevance at all to this  
21 document, Counsel.

22 MR. VOVOS: Judge, it's very relevant because it has  
23 to do with the quality and the potatoes that go through the  
24 shed and --

25 THE COURT: But nobody's arguing about the quality.

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1 MR. VOVOS: Well, I think that they are indirectly.  
2 They're saying that this isn't this what they consider to be  
3 something; and we want to show that there are standards and  
4 requirements, not only by the Federal Government, by the State  
5 Government --

6 THE COURT: How is that relevant to -- to what point?  
7 I'm missing the point. Please help me.

8 MR. VOVOS: The point is is what is called a processor  
9 or a packer shed; that there are rules and regulations  
10 pertaining to potatoes; and it doesn't specify what you have to  
11 be. It's -- it's an issue. It's part of our defense.

12 THE COURT: No. This is very indirect. It's very  
13 indirect for me, Mr. Vovos. Very indirect. You're telling me  
14 that this goes to the question of what a processor is?

15 MR. VOVOS: I think it goes to that issue indirectly.  
16 I think --

17 THE COURT: Well, if this person's going to testify  
18 substantively as to what a processor is --

19 MR. VOVOS: No, he's not.

20 THE COURT: -- well, then, it doesn't go to processor.

21 MR. VOVOS: He's not going to testify substantively.

22 THE COURT: Okay.

23 MR. VOVOS: He's the safety person, and it's just --

24 THE COURT: All right.

25 MR. VOVOS: -- what we have to do; and it's manuals

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1 that govern the operation of the plant. That's all.

2 THE COURT: I'm going to sustain the objection. I  
3 don't see it relevant at all. So what's next?

4 MR. TORNABENE: Your Honor, I did confer with  
5 Mr. Bentley; and we have agreed for going forward with  
6 Mr. Sackmann starting up.

7 THE COURT: Okay.

8 MR. TORNABENE: And my understanding from the defense  
9 is that, after that, we may get to Mr. Smith who we've also  
10 agreed, based on the brevity of the testimony, to go forward  
11 with today, and, then, Mr. Turner. And I've been provided over  
12 lunch with some exhibits that the defense intends to, I believe,  
13 introduce through him. These are publications; some of which  
14 have been admitted, some we've seen before. However, there are  
15 two, three -- there are four which I don't believe were in any  
16 Rule 16 disclosure of Mr. Turner. I conferred with Mr. Bentley  
17 on that point, and he was not able to point me to that at that  
18 time.

19 THE COURT: Okay. Mr. Bentley, are you calling  
20 Turner?

21 MR. BENTLEY: Yes, your Honor.

22 THE COURT: All right. I have eight exhibits.

23 MR. BENTLEY: Yes, your Honor. These are all part of  
24 the professional literature on which Mr. Turner bases his  
25 opinion in part. These are documents that, as best I can

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1 recall, Mr. Turner provided to me after the Daubert hearing. I  
2 looked at my exhibit list. I see that, on February 22nd, I  
3 filed a second amended exhibit list. I'm sorry I don't have the  
4 ECF number. And these documents were not included on that list.

5 On March 29th, I filed my third amended exhibit list, ECF  
6 1012, and that list does include these documents. I would agree  
7 that I did not cull out these particular documents to  
8 Mr. Tornabene as part of a Rule 16 disclosure; but I don't think  
9 that the Rule 16 disclosure, under the Federal Rules of Criminal  
10 Procedure, imposes as extensive an obligation as it might in a  
11 civil case. And I don't think that there should be a problem  
12 with having Mr. Turner identify these publications.

13 THE COURT: Okay. Well, my concern is a  
14 straightforward one. The disadvantage of not having these  
15 titles in order to read them, show them to your experts, get  
16 some feedback on what the appropriate questions are, the same  
17 sort of prep that every litigator engages in. So --

18 MR. BENTLEY: If I may, your Honor, just to make  
19 clear, these were -- these were provided to the Government as  
20 part of our JERS exhibits; and they were listed on ECF 1012.  
21 And, in fact, on Page 31 of ECF 1012 filed on March 29th,  
22 there's a section heading. It says, "Documents Relating to  
23 Agricultural Experts." And, with the exception of Exhibit 1545,  
24 which was offered and intro -- accepted through Dr. Stark, all  
25 of these other documents were listed; and they were disclosed

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1 along with our JERS exhibits.

2 THE COURT: Okay. Anything else, Mr. Tornabene?

3 MR. TORNABENE: No, your Honor.

4 THE COURT: Okay. The objections are overruled on  
5 that basis. And, if there's something more that comes -- to  
6 which the Government objects later and, by all means, bring it  
7 to my attention. So you may use those in connection with your  
8 witness.

9 MR. BENTLEY: Thank you, your Honor.

10 THE COURT: I'm satisfied that Rule 16 is substantially  
11 complied with.

12 What else do we have before the jury comes in? Just a  
13 thought, folks. Please think about this. A week from Friday is  
14 Memorial Day weekend. Juror No. 11's son is getting married the  
15 next day at her home. We need to think about whether we're  
16 going to give her just the afternoon or whether we're going to  
17 give her the whole day. Start thinking about that.

18 Okay. What else?

19 MR. VOVOS: I'll just mention something, if I could,  
20 if it please the Court, for a second. In an effort to economize  
21 and make use of the Court's time and that of counsel, we're  
22 proceeding with the defense by calling witnesses as a group to  
23 make sure that we can get them here in court and have them ready  
24 to testify. And I know. The -- the length of time on cross  
25 examination can affect things. And just by way of an



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1 explanation, we had three witnesses yesterday; and we only have  
2 two back today. Those are always problems that come up.

3 But what I'm seeing, your Honor, in the -- in the whole  
4 picture of the defense is that we may, depending on what happens  
5 with the cross today, run out of witnesses this afternoon. I --  
6 you know, I -- I -- I can't say. And, perhaps, tomorrow, even  
7 if there's four or five -- I'm talking from getting them from  
8 all of the defendants; but it's working together and trying to  
9 do everything together to get witnesses to come together. The  
10 witness list has been cut short. I guess what I'm saying, it  
11 looks like we're going to be finishing our case next week.  
12 Maybe, Tuesday. Maybe earlier than that with where we're at.  
13 But that's what I'm saying --

14 THE COURT: Okay.

15 MR. VOVOS: -- to the Court. And I --

16 THE COURT: I'm open minded on this issue, Counsel.  
17 So just tell me.

18 MR. VOVOS: I -- I --

19 THE COURT: Okay. Let's just get to it and see where  
20 the day takes us and we'll go from there. Thanks.

21 MR. VOVOS: That -- that's fine. Thanks, Judge.

22 THE COURT: Okay. Let's get the jury in.

23 (Jury in)

24 THE COURT: Okay. Folks, welcome back. Please be  
25 seated. Do we have another witness?

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1 MR. BENTLEY: Yes. The Defense calls Steve Sackmann.

2 THE COURT: Mr. Sackmann.

3 (Witness enters courtroom)

4 Mr. Sackmann, if you'll place your back to the door so we  
5 can take your photograph for use by the jury during  
6 deliberations. No, I'm sorry. Over here. Back to the door.

7 THE WITNESS: Oh, back to the door.

8 THE COURT: Back to the door. Sorry. That direction.

9 (Courtroom Deputy takes picture of the witness)

10 THE COURT: I apologize. I should have been better at  
11 that.

12 THE WITNESS: I don't take instruction well.

13 THE COURT: Well, please take this one well.

14 (STEVE SACKMANN, called by the Defendant, was sworn)

15 THE COURT: Good afternoon. Please be seated.

16 THE WITNESS: Good afternoon.

17 THE COURT: Please tell us your name and spell both  
18 for the jury.

19 THE WITNESS: Steven H. Sackmann, S T E V E N.  
20 Sackmann, S A C K M A N N.

21 THE COURT: So, it's Sackmann.

22 THE WITNESS: Right.

23 THE COURT: Thank you, Mr. Sackmann.

24 / / / / /

25 / / / / /

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1 DIRECT EXAMINATION

2 DIRECT BY MR. BENTLEY:

3 Q Good afternoon, Mr. Sackmann.

4 A Good afternoon.

5 Q You and I met for the first time last Friday afternoon.

6 Correct?

7 A Yes.

8 Q You'd been down here for the seminar that gave us all a  
9 little break in these proceedings?

10 A Yes.

11 Q And how are you employed?

12 A I'm an attorney.

13 Q Where is your practice located?

14 A Othello.

15 Q And do you have a particular specialty or emphasis?

16 A Yeah. It's pretty general. Farm practice, agri based. I  
17 represent farmers, packers, processors, everything to do with  
18 agriculture, typically.

19 Q Do you know my client, Lynn Olsen?

20 A I do.

21 Q Do you see him here in court today?

22 A Yes.

23 Q Is he the gentleman in the blue shirt?

24 A Yes.

25 MR. BENTLEY: Okay. May the record reflect the

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1 identification of Mr. Olsen?

2 THE COURT: It's the light blue shirt. Right?

3 THE WITNESS: Yes.

4 THE COURT: Okay. Thank you. Go ahead.

5 Q (BY MR. BENTLEY) Can you tell us the first contacts you  
6 had with Mr. Olsen?

7 A Yes. I think it was in 1999. His father asked me to help  
8 Lynn with financial difficulties that he was having.

9 Q And what is his father's name?

10 A Lynn, Senior.

11 Q Have you represented Lynn Olsen, Sr., in the past or do  
12 you --

13 A I have for many years and still do.

14 Q And is he a farmer?

15 A He is.

16 Q What does -- does he have a principal crop that he grows?

17 A Potatoes.

18 Q Okay. And when -- after -- withdrawn.

19 After Lynn Olsen, Sr., asked you to assist his son, what  
20 did you do?

21 A I advised him to commence a Chapter 11 reorganization.

22 Q Now, Chapter 11. Is that part of the Bankruptcy Code?

23 A It is.

24 Q Can you give us a brief explanation of what Chapter 11 is?

25 A Chapter 11 is the bankruptcy proceeding for large

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1 corporations or can be used for individuals. Anybody can use  
2 it. But normally it's -- it's the proceeding that General  
3 Motors or railroads or anybody would be in.

4 Chapter 12 is a farmer program that came in in the mid  
5 '80s. But the debt that Mr. Olsen had at the time in 1999  
6 exceeded the jurisdictional limits for a 12. So, his options  
7 were 11 as opposed -- a 7 is a liquidation; 11 you reorganize  
8 the business.

9 Q So, if I had a neighbor who had extensive medical bills and  
10 they were out of work and they found it necessary to seek a  
11 bankruptcy solution for their problems, under what chapter would  
12 that be pursued?

13 A That could be -- if it's an individual, it could be a -- if  
14 it's hopeless, you know, it might be a 7 or it might be a  
15 Chapter 13, which is a wage earner plan. Similar to Chapter 12  
16 for a farmer. And, in some cases, if -- if it was big enough,  
17 an 11 would be appropriate.

18 Q Have you heard the term "reorganization" used in the  
19 context of the bankruptcy laws?

20 A Yes.

21 Q How does that relate to Chapter 11?

22 A That is the reorganization. If -- 13, 12, and 11 are the  
23 three sections of the Bankruptcy Act that -- that people can  
24 restructure their business.

25 Q In the course of your work for Lynn Olsen, Jr., in the

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1 bankruptcy area, did you become familiar with the financial  
2 problems that he was encountering?

3 A I did.

4 Q And did you acquire knowledge of where those problems  
5 began?

6 A I did.

7 Q Can you tell us about that?

8 A Yes. Lynn was a potato farmer like his father but in  
9 separate farming operations. He had farmed since the early '80s  
10 as a young man, first with his dad and then on his own. He has  
11 another brother that farms with his father.

12 Lynn was a big potato grower in '95, '96, '97, '98, those  
13 years. By "big," I mean he was farming 4,000 acres of potatoes.  
14 Part of them were open. Part of them were contracted. And, in  
15 1996, when we talk about potatoes, that's referred to as  
16 probably the worst potato year or one of the worst that we've  
17 ever seen in the Columbia Basin. And he was in that. '97  
18 wasn't a good year for him. And, then, in '98 he had hail  
19 damage.

20 He farmed both potatoes on contract with processors and  
21 open potatoes where he was marketing them through fresh heads.  
22 But he -- he developed a whole bunch of debt, and he was being  
23 financed by KeyBank and some of our local fertilizer companies.  
24 And there was litigation between KeyBank and the fertilizer  
25 companies. And, basically, KeyBank, in the spring of '99,

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1 pulled the plug and he said "We're not financing him anymore."

2 And there was some litigation, I think. I can't remember  
3 what it was, but it precipitated us. By the time Lynn got to  
4 me -- I wasn't involved in the earlier litigation -- we didn't  
5 have any opportunity to avoid a bankruptcy. We had to stop  
6 entry of a Judgment. So, we filed a petition and started the  
7 Chapter 11 proceeding.

8 Q Now, you refer to growing potatoes open versus growing  
9 under contract. Could you explain those terms to the jury?

10 A Yeah. Open means you are taking the market risk.  
11 Typically, the processor, McCain or -- or Simplot will give you  
12 a contract to raise potatoes for them with a price, a quality  
13 standard that you have to meet. That's a contract. Or a fresh  
14 head can give you a contract and with a floor price or some kind  
15 of a guarantee of what you're going to get.

16 When I talk about open potatoes, that means there is no  
17 guarantee; that nobody has told you what those potatoes will  
18 bring in the market. A good potato grower, like Lynn, can  
19 usually raise the crop. A lot of the risk in potato growing is  
20 in what price you're going to get for -- after you raise it.

21 Q And you mentioned the '96 year. Would it be fair to say  
22 that Lynn experienced significant losses on his open potatoes in  
23 that year?

24 A Yes. I think everybody did on open potatoes. Anybody that  
25 had them had the loss.

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1 Q And was he able to dig to get out of that hole in the next  
2 two or three years?

3 A During -- he's kind of unique because he was -- well, not  
4 unique, I guess; but he farmed in the Chapter 11 proceeding for  
5 two years and was profitable both years.

6 Q Well, let's go back to '97, '98, '99, and 2000. Did Lynn  
7 have a contract at that time?

8 A He had some contracts. He had contracts with Simplot and  
9 Nestles''', I think; but he also raised open potatoes. And the  
10 combined effect, in two of those years, he had tax losses. In  
11 '98, had he -- or '97 he had a tax loss of over a million  
12 dollars. One of those other years -- and I can't remember  
13 which -- it was about a half million. And, then, he had one of  
14 those years he made a couple of hundred thousand to the good.  
15 That's -- they're on tax -- on cash basis. So, they're a year  
16 behind with a lot of that. But --

17 Q And was he incorporated at that time?

18 A He had a corporation, and he -- and, also, an individual.  
19 Yeah.

20 Q Are you familiar with Olsen Agriprises?

21 A Yes.

22 Q And was that a DBA? A "doing business as"?

23 A I can't remember whether it was a DBA or whether that was  
24 the corporation. I'm not positive.

25 Q Do you remember if the bankruptcy was filed in the name of



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1 Lynn and Julie Olsen?

2 A It was.

3 Q Would that suggest to you that he was --

4 A A DBA.

5 Q Okay. So, after you file seeking the Court's protection,  
6 tell us what happens next.

7 A Usually, the first problem that the farmer has that comes  
8 to me in the spring with that kind of a problem is they need --  
9 you know, they want to farm in 1999. And they have -- hopefully  
10 they have receivables from '98 or even earlier that have not yet  
11 been paid. Because one thing you can't do in a reorganization  
12 is you cannot force the bank or anybody to finance you. So,  
13 you -- the critical thing is figuring out how you are going to  
14 farmer in the current year, in this case 1999, when you don't  
15 have any financing. No bank is going to touch you.

16 Lynn had carryover crops from '98. Substantial. He owed  
17 KeyBank around six million, and he had carryover crops of four  
18 or five million. And what we did in the bankruptcy, initially,  
19 in the month of April, was make a motion to use the prior year's  
20 receivables to farm with in '99, which is typical what we do  
21 with farmers. They -- we have to get a Court Order. We have to  
22 convince the Judge that there's no risk of losing that cash  
23 collateral. And, then, if we are successful in that, he let's  
24 the farmer use last year's money to farm in '99.

25 Q And, when you say, "carryover crops," are you referring to

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1 potatoes that were harvested in, say, '98 but still unsold?

2 A Yes.

3 Q That -- so what -- what you might call in a -- in a retail  
4 setting "inventory."

5 A That's right.

6 Q Correct?

7 A Either the actual crop or, perhaps, the receivable that  
8 somebody owed him for that '98 crop. I think he also did some  
9 onions in '98. So, it could have been onions and potatoes.

10 Q Did he continue farming, then, throughout the pendency of  
11 the Chapter 11 proceedings?

12 A Yes.

13 Q How did he do that aside from the carryover funding you  
14 that described?

15 A Well, we, initially, tried to use those funds. KeyBank  
16 objected. And, eventually, he negotiated with third parties;  
17 and he farmed, in 1999, in five separate joint ventures with  
18 farmers and other business people. And we gave KeyBank the cash  
19 receivables that they had. By the end of the bankruptcy, out of  
20 that six million that came, he paid the bank with the cash  
21 about -- he only owed them about 60,000. But they claimed  
22 another half-a-million dollars of interest, attorney fees,  
23 costs, that type of thing.

24 Q Could you describe for the jury how one of those joint  
25 venture operations worked?

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1 A They were all pretty similar. And what Lynn had to do --  
2 the -- he had a couple things going for him. One, he was a very  
3 good potato farmer. He knew how to raise those crops. And,  
4 two, he had negotiated with Simplot and Nestles'' in prior  
5 years. I think they were five-year contracts to raise potatoes  
6 for them. I think they were each about 2,000 acres apiece. And  
7 he had negotiated in that contract in -- I'm not sure when those  
8 contracts started. Maybe '96, '97, maybe '98.

9 But they were for -- they were on escalators. So, his --  
10 what they paid him increased every year. Whereas, with most  
11 other growers, I -- I'm not aware of anybody else that had a  
12 long-term contract with Simplot or Nestles'' and, certainly,  
13 none that had the escalating price.

14 So, in the bad potato years, his contract allowed him to  
15 get paid more than the typical grower. And -- and that's what  
16 was valuable to his business partners.

17 And the joint ventures, essentially, were these other  
18 people put up the money to raise the crop that he had no way of  
19 coming up with through commercial sources. They took -- they  
20 did it at two percent over what they could borrow at the bank  
21 because these people did have the ability to borrow. So, they  
22 got interest on their investment. And they got a six percent  
23 management fee. And, then, they split the profits above that  
24 with Lynn.

25 Q Are you familiar with the concept of a plan as that term is

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1 used in the context of a Chapter 11 proceeding?

2 A I am.

3 Q Is it fair to say that the formulation of a plan is the  
4 goal that you, as an attorney, work toward during a Chapter 11?

5 A Yes.

6 Q And did you work toward that goal in the bankruptcy for  
7 Lynn and Julie Olsen?

8 A We did.

9 Q Did you achieve that goal?

10 A We did.

11 Q And a plan has to be approved by somebody. Correct?

12 A Yes.

13 Q And who is that somebody?

14 A In the case of 11, the plan gets voted on by the creditors.  
15 You treat secured creditors individually in your plan. So,  
16 every one of his -- that's John Deere, that's KeyBank, all those  
17 people -- they get -- you spell out in the plan how you're going  
18 to pay them. And those payments might run out 10, 15, 20 years  
19 sometimes.

20 Unsecured creditors are typically treated in one class; but  
21 all of the creditors, after you put out your plan, they get the  
22 opportunity to vote. In some cases, if they -- if you can't get  
23 them to agree to vote for your plan, you can confirm a plan,  
24 sometimes, over their objections by meeting certain statutory  
25 requirements that the Judge views as being fair and equitable.

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1 Q Was the plan in Lynn's case approved by vote of the  
2 creditors --

3 A Yes.

4 Q -- or was it -- or did it have to go to the Court over  
5 someone's objection, if you recall?

6 A No, we didn't. We -- it was a very litigious Chapter 11,  
7 primarily, because of KeyBank. They -- even though they almost  
8 got paid out with the cash receivables, they bled the thing.  
9 They were over secured. They had the assets, you know. And, in  
10 my view, the attorney just bled it. He did a lot of unnecessary  
11 things that were very expensive.

12 But, ultimately -- and we had hired an attorney who  
13 specializes in -- in suits against banks to investigate. But,  
14 ultimately, we dropped our claim against the bank. We settled  
15 with the bank. They reduced the attorney fees they were  
16 claiming and the interest and a bunch of other things. We  
17 settled with them and with every other creditor. And -- and  
18 unsecured creditors voted for the plan. And, so, we confirmed  
19 without litigation.

20 Q Do you recall, approximately, when the plan was confirmed?

21 A January 16th of 2001.

22 Q And did the plan provide a road map for Lynn's farming  
23 operation over a period of years after that?

24 A Yes.

25 Q And there were certain requirements he was subject to as

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1 far as making payments to creditors and whatnot?

2 A Yes. The terms for each secured creditor are spelled out,  
3 and they substitute for any prior agreement. So, each creditor  
4 and Lynn knew exactly what he had to pay in monthly or annual  
5 payments, the interest rate's set, and the term is set.

6 Q So, over the course of time, whatever period it was that  
7 the plan envisioned, Lynn kept up his commitments and did what  
8 he was required to do?

9 A Yes.

10 Q And that, ultimately, lead to his being completed with the  
11 plan. Correct?

12 A Yeah. They're actually -- he actually -- you get out from  
13 under bankruptcy supervision after you confirm a plan, and it  
14 might take a couple of months to close that bankruptcy. Then,  
15 your -- your rights and responsibilities are all spelled out in  
16 the Chapter 11 plan. And, if -- if the debtor or somebody in  
17 Lynn's position, say he defaulted on a provision, what the  
18 creditor does -- he does not go back into bankruptcy court. He  
19 goes into state court and says, "Here's the plan provision, and  
20 this fellow didn't comply."

21 Q And that never happened with Lynn, did it?

22 A No, it did not.

23 MR. BENTLEY: Okay. No further questions.

24 THE COURT: Cross? Mr. Anderson, good afternoon. You  
25 may proceed.

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1 MR. ANDERSON: Thank you, your Honor.

2

3 CROSS EXAMINATION

4 CROSS BY MR. ANDERSON:

5 Q Good afternoon, Mr. Sackmann.

6 A Good afternoon.

7 Q I just have a few questions. I think you briefly mentioned  
8 Mr. Olsen's farm income or losses in the few years leading up to  
9 the Chapter 11 filing?

10 A Yes.

11 Q Do you recall those exact numbers?

12 A No. They were nominal.

13 Q What if I said, 1996, he had a loss of just over \$505,000?  
14 Would that be about right?

15 A Yes, I think that's right.

16 Q And, then, in 1997, a total income of 100 -- \$168,000?

17 A That's a possibility. I recall it was, like, 200,000.

18 But --

19 Q And, then, 1998, about 1.2 million loss.

20 A Yes.

21 Q Does that seem about right? And, as far as secured  
22 creditors, do you know the total amount owed to them at the time  
23 of filing?

24 A No, I don't.

25 Q Would a figure of around six million sound about right?

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1 A I'd say that's too low.

2 Q It was higher than that? It was higher?

3 A Yes.

4 Q Okay. And what was the return, as part of this plan, cents  
5 on the dollar? How much did they get back?

6 A Secured?

7 Q The unsecured.

8 A The unsecured? 14 percent.

9 Q They got 14 percent back?

10 A Yeah. Were you asking me of unsecured debt or secured  
11 debt?

12 Q I was asking you about unsecured debt.

13 A Oh, okay. And what number did you ask me?

14 Q About six million dollars. Does that sound --

15 A That's right. I --

16 Q Okay.

17 A Yes.

18 Q And they got 14 percent of that back?

19 A That's correct.

20 Q And when was the plan complete?

21 A January 16th of 2000 --

22 Q Okay.

23 A -- and 1. 2001.

24 Q And it was your understanding that his business was getting  
25 better at that point?



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1 A Well, he was profitable both years. It's -- the potato  
2 business is all about risk. It's up and down, you know, from  
3 one year to the next.

4 Q So, he was profitable, then, after the plan had ended?

5 A I don't know after the plan. He was profitable in 1999,  
6 and he was profitable in 2000.

7 Q Okay.

8 MR. ANDERSON: I have no other questions, your Honor.

9 MR. BENTLEY: No redirect.

10 THE COURT: You may step down, Mr. Sackmann. Good to  
11 see you. Thank you for being here.

12 THE WITNESS: Thank you.

13 THE COURT: Next witness.

14 MR. BENTLEY: We call Stuart Turner.

15 THE COURT: Stuart Turner. Mr. Turner, if you'll come  
16 up to your right and to my left. And, then, you've been in  
17 court so you know the procedure. Right?

18 THE WITNESS: Yes, sir.

19 THE COURT: Thank you.

20 (Courtroom Deputy takes picture of the witness)

21 THE COURT: Please, raise your right hand.

22 (STUART TURNER, called by the Defendant, was sworn)

23 THE COURT: Okay. Please be seated. When you're  
24 comfortable, tell us your first and last name speaking directly  
25 into the microphone. Thank you.

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1 THE WITNESS: Stuart Turner. S T U A R T. T U R N E R.

2 THE COURT: Okay. You have may proceed.

3

4 DIRECT EXAMINATION

5 DIRECT BY MR. BENTLEY:

6 Q By whom are you employed, Mr. Turner?

7 A My wife and I have a small consulting business, Turner &  
8 Company, Inc.

9 Q And where is your business located?

10 A It's in West Richland.

11 Q What is the nature of your consulting business?

12 A It's diverse. I'm an independent. About 50 percent of my  
13 work is forensic examination of crop loss. About 25 percent of  
14 it is research, often contract research, for NRCS-USCPA, similar  
15 organizations. And the remainder of the work I do is farm  
16 management work.

17 Q Do you have any family background in agronomy?

18 A I do.

19 Q Could you tell us about that?

20 A Well, I'm one of two witnesses in this case that's sort of  
21 second generation. My father came to this country in 1950 and  
22 formed a consulting group, initially based in Seattle,  
23 eventually expanded nationwide with -- with five offices. Did,  
24 really, very much the same work that I'm doing. I think he's  
25 credited by many people as really being the inventor of forensic

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1 agronomy. So, starting from the time that I could walk, I was  
2 in citrus groves and potato fields and cotton fields and wheat  
3 fields. So I just grew up with the business.

4 Q All over the country?

5 A All over the country.

6 Q Please, describe your education for the jury.

7 A I graduated high school, 1974, Mercer Island, and went to  
8 Washington State University; got a BA in American history; got a  
9 degree, a second degree, a Bachelor of Science in agronomy,  
10 specializing in plant protection chemistry.

11 Q So you have two bachelors degrees?

12 A I do.

13 Q And they're both from WSU?

14 A They are.

15 Q Can you tell us how you transition from history to plant  
16 science or agronomy?

17 A Well, as I mentioned, I spent a lot of time with my father;  
18 and he did a lot of work like this. And, of course, the first  
19 30 years of his life there -- there was no real alternative  
20 dispute resolution. So everything went to trial. And I got to  
21 attend a few trials, was sort of interested in the idea of  
22 becoming an attorney. And, then, I sort of spent more time with  
23 attorneys and realized that I just really wasn't cut from that  
24 cloth and that I needed to come home at the end of the night  
25 with, you know, stains on my knees and dirt under my nails.

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1 Q Do you hold any professional certifications?

2 A I do.

3 Q Can you tell us what they are?

4 A I'm board certified by the American Society of Agronomy,  
5 the Crop Science Society of America, and the Soil Science  
6 Society of America --

7 (Interruption by the reporter)

8 THE WITNESS: The Crop Science Society of America and  
9 the Soil Science Society of America. The three professional  
10 societies formed a joint certification board. My particular  
11 certification is Certified Professional Agronomist. I've been  
12 so certified for most of my career. There's fewer than 600 of  
13 us in the world. There's currently 17 of us in this state.

14 Q (BY MR. BENTLEY) So your certification was issued to you  
15 by a joint committee of the American Society of Agronomy, the  
16 American Society of Soil Science, and the American Society of  
17 Crop Science? Is that --

18 A Close.

19 Q -- a fair summary? I missed some of those names, but --

20 A Yeah, the three. We call them the "tri-societies."

21 Q Okay. What does one need to do in order to obtain this  
22 certification?

23 A Well, it's a combination of things. I -- the first five  
24 years in the certification program I was certified at the -- the  
25 lower level as the Associate Professional Agronomist, and that's

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1 a requirement unless you have a -- a Ph.D. You have to --  
2 every -- in a 24-month cycle, you have to submit a minimum  
3 number of continuing education requirements of a certain  
4 category. There are five different categories. You have to  
5 take a board exam, you have to provide professional references,  
6 and you have to be able to establish that you've worked  
7 professionally for the minimum length of time and, then, you're  
8 allowed to take the full certification, which I did in, I think,  
9 1990.

10 Q Are you also a certified crop advisor or is that part of  
11 the same certification as an agronomist?

12 A Yeah, that's a separate program. That's a little bit of a  
13 different program. It's called the CCA certification. And CCAs  
14 are the people who you see very frequently in the field.  
15 They're the ones that are usually pulling the samples, checking  
16 for bugs and disease. And it's a lower level of certification,  
17 but it's a -- it's a production-oriented certification. There's  
18 quite a few CCAs. There's about 30,000 of them.

19 Q As a certified agronomist, have you received any special  
20 recognition from the U.S. Government?

21 A Yes, I have.

22 Q Would you tell us about that?

23 A Well, I -- Governor Gregoire and the acting, at the time,  
24 Director of the Department of Ecology appointed me several years  
25 ago to the board of the GWMA, which stands for the Groundwater

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1 Management Area. And we have a problem here, both in the  
2 Columbia Basin where there's been a GWMA for about 15, 20 years  
3 and in the Yakima Valley, with nitrates, principally, from  
4 agricultural sources -- and nitrates are just a form of  
5 nitrogen, one of the major plant nutrients -- being over applied  
6 and, in combination with over irrigation, contaminating  
7 groundwater. So I'm on what's called the GWAC, which is the  
8 Governing Committee of 22; and I'm acting as a technical  
9 advisor.

10 I've also been appointed by the NRCS, which is a division  
11 of USDA. The National Resource Conversations Service is  
12 responsible for writing certain technical standards. One of the  
13 standards is called the "590," and it's the nutrient standard.  
14 And it's directly linked to appropriate practices for the  
15 application and management of nutrients on crops. We've been  
16 rewriting the 590 for about a 12-month period. We meet usually  
17 monthly. We'll complete that task in June. And that will,  
18 then, stand for five years before it's again revised.

19 Q Have you -- withdrawn.

20 When did you start working in the area of the potato  
21 industry in the State of Washington?

22 A Well, ignoring what I did following and helping my dad,  
23 1977.

24 Q Have you performed various jobs associated with potato  
25 production?

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1 A I've had the most bottom rung job of cleaning out the  
2 potato storages and shoveling out rotting potatoes, sand  
3 blasting tanks, delivering fertilizer. And I started at the  
4 bottom and worked my way up.

5 Q Have you worked in the seed potato business?

6 A Yes. I have a number of seed potato producers that I am a  
7 technical advisor for.

8 Q Are you a member of any professional societies --

9 A A number.

10 Q -- relating to agriculture?

11 A Yes.

12 Q Tell us what --

13 A My -- my parent society is the American Society of  
14 Agronomy. But I'm also a member of the Western Society of Wheat  
15 Science; the Wheat Science Society of America; the Washington  
16 State Horticultural Association; International Society of  
17 Arboriculture, which is a fancy word for trees; and I -- I  
18 attend other professional organizations on an occasional basis,  
19 part of what I have to do for my continuing education  
20 requirements.

21 Q Have you had a professional relationship with some of the  
22 defendants in this case?

23 A Over the last 25 years, I have.

24 Q Well, let's go through the -- the defendants individually;  
25 and why don't you tell us about work that you have done with

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1 Mr. Olsen, first of all.

2 A Well, I've known of Mr. Olsen for probably 20 years. I've  
3 actually worked for him off and on for the past 12 years. I've  
4 worked closely with him since 2006. Since he's been renting  
5 ground from one of the farms that I manage, I tend to see him on  
6 a very regular basis.

7 Q And Mark Peterson?

8 A Mr. Peterson I know just sort of incidentally. He's a  
9 manager of Carr Farms. When Jr.'s father, Jack, was alive, I  
10 worked for him; but I otherwise haven't had a lot of contact  
11 with him.

12 Q What about Jeff Gordon?

13 A I know Jeff sort of as one of the Gordon brothers. I've  
14 worked with them. I know at least twice I've been called out  
15 when they had a major problem in their potato fields.

16 Q I didn't catch -- a problem with what?

17 A Their potato fields going back to the late '80s.

18 Q And do you know Fred Ackerman?

19 A I do know Mr. Ackerman.

20 Q Have you ever had any professional connection with  
21 Mr. Ackerman?

22 A I've been in his office before, usually on crop insurance  
23 claim related information.

24 Q Have you provided or do you provide expert consulting  
25 services for other Washington potato growers besides --



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1 A I do.

2 Q -- Mr. Olsen and --

3 A Yes. I have one large grower that provides about  
4 29 percent of Lamb Weston's raw products. That's AgriNorthwest.  
5 I have a number of other smaller growers that I consult with, as  
6 well.

7 Q Have you prepared a PowerPoint presentation for the jury to  
8 explain the basic potato production cycle?

9 A I have. It's a very, very basic -- within the limits of  
10 the time constraints here, yes.

11 MR. BENTLEY: All right. Could we show the first  
12 slide of this presentation, Exhibit 1507, without showing to the  
13 jury so that Mr. Turner can identify it?

14 THE COURT: Do you have a copy of this, Mr. Tornabene?

15 MR. TORNABENE: Yes.

16 THE COURT: And this is for illustrative purposes  
17 only?

18 MR. BENTLEY: Yes.

19 THE COURT: Okay. Thank you. Any issues before we  
20 begin this presentation, Mr. Tornabene?

21 MR. TORNABENE: No, your Honor.

22 THE COURT: Okay. You may proceed.

23 MR. BENTLEY: I offer 1507. I ask permission to  
24 publish to the jury.

25 THE COURT: You may publish for illustrative purposes.

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1 MR. BENTLEY: Thank you.

2 (Exhibit No. 1507 admitted into evidence)

3 Q (BY MR. BENTLEY) Let's go to the first slide.

4 MR. BENTLEY: And, if I may, your Honor, I'd like to  
5 let Mr. Turner describe and narrate the 14 slides that are here.

6 THE COURT: You may proceed.

7 THE WITNESS: Okay. The first slide is just simply a  
8 title.

9 Can we blow this up a little? Could we get to full screen  
10 because this is small. Now it's really small. You're going to  
11 force me into my glasses.

12 (Discussion off the record)

13 THE WITNESS: I think we can move on. I can --

14 MR. BENTLEY: Okay. We have it? We have it. If we  
15 may go to the ELMO, I think that might work.

16 THE WITNESS: Certainly.

17 MR. BENTLEY: I think we can blow it up a little more.

18 Q (BY MR. BENTLEY) Just so we're all on the same page, is  
19 this the first slide?

20 A It is. Now we've lost our color.

21 Q We lost our color.

22 A Yeah. Thank you. At the very top, you can see a series of  
23 little -- we call them micro-plants. The very beginning of  
24 potato culture is actually tissue culture where we go to a  
25 single cell or a group of small cells; and we grow those on a --

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1 basically, a petri dish. It's, like, an auger growth medium.

2 When we get the little plant that's developing several sets  
3 of leaves, we carefully transplant them. So you can see sort of  
4 in the center picture there's a series of small little plantlets  
5 there. And, at the -- at the bottom, we -- we finally get to  
6 the harvest. We have something that we can actually transplant  
7 and grow.

8 The reason that we do this is that the potato is one of the  
9 very few crops that's vegetatively reproduced. In other words,  
10 it's a chunk of the tuber that we actually plant in the field.  
11 And that encompasses a whole host of problems and risks because,  
12 when you have all that tissue compared to a discrete, usually,  
13 very dry seed -- seeds are typically less than 25 percent  
14 moisture, often down in the ten percent range -- disease doesn't  
15 survive well on or in seeds. But it thrives well in a juicy  
16 little piece of tuber.

17 Ah, color. Perfect. What an improvement. So we start  
18 with the microtuber of something that we know is ultra clean.  
19 It's been virus tested. It's called an indexing process. We  
20 you use amino assays and other sort of neat little tests to make  
21 certain it doesn't have disease. And this is the very beginning  
22 of the process. You can see that this can occur year-round. In  
23 fact, we do -- a lot of potato research, to my wife's delight,  
24 occurs on the islands of Hawaii since we can grow three crops in  
25 a year.

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1       Once we get to the -- let's go to the next slide. Once we  
2 get to the little mini-plant, then we -- we grow it out. First,  
3 it's in a smaller field than you see in this -- this photo I  
4 have here. But, typically, it will be in a -- in a one to  
5 15-acre field plot. That grows for one season, then that is  
6 increased out from generation one to generation two. And, so,  
7 this is a full circle. Just, typically, 100 to 125-acre circle.  
8 Even though you see green in the very bottom of the screen,  
9 that's not another potato plant. We grow potatoes in a very  
10 isolated area so that we don't have the insects, the vector  
11 diseases, and we don't have soils that may be infested with  
12 common potato pathogens.

13       So this is the field, then, at the end of this production  
14 season. This field, when the vines die down, we actually  
15 desiccate them with a chemical. We spray a chemical on them  
16 that completely dries them down because that reduces disease  
17 transmission. It also helps to set the skins so that the  
18 Russet-type skin is more abrasion resistant when you're  
19 harvesting. And this field would, then, be harvested; and it  
20 will go into a storage.

21       Let's have the next slide. You can see the grower walking  
22 through the field. This is something -- the seed fields get a  
23 lot of walking. And, if you compare this to one of our fields  
24 here, this is almost end of the season. This is a -- a mid to  
25 late August photograph. You can see that it's quite easy to

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1 walk down the rows. There's still some bare soil there because  
2 seed's often grown in a high altitude area where the growing  
3 season is very short. And we don't want to produce a lot of  
4 potatoes because everything that's oversize has to go for use  
5 that we get a lot less money. It frequently will go for process  
6 use. So you want small seed, and so you have a very short  
7 growing season. So you don't close the rows completely. So the  
8 vines are often only two feet long. Our potato vines here, when  
9 they're fully developed, are four to five feet long.

10 Next slide. Okay. This is an aerial shot of -- of the  
11 actual harvest process. This is very typical. We see a tractor  
12 pulling the digger. The digger has a great big shoe on the  
13 front that goes down underneath the potatoes. It lifts the  
14 potatoes and the soil together. And there's a -- there's a  
15 series of rotating chains that have long bars that are just a  
16 certain distance apart. And the bars are coated with rubber  
17 because this begins the process of handling the tuber where  
18 bruise because something that we're really focused on.

19 So they're elevated. They're cleaned. The vines and other  
20 material gets blown out the back. There are big fans on the  
21 machine there. You can see there are two individuals.  
22 Depending on the field, they're either picking out anything  
23 that -- that looks really off type or they're more commonly  
24 pulling whatever remnants of vines are coming up the chain or  
25 they're pulling a rock out. If you're in a field that has rock,

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1 the digger can't distinguish between a nice smooth rock and a  
2 tuber. They look kind of the same to the digger.

3 So it, then -- the boom goes over to the truck. And you  
4 can see that there's a very small drop. That's a flexible boom  
5 that can move up and down. And you'll see that the near side of  
6 the truck has a partition that has been dropped down. That's  
7 hydraulically controlled by the -- by the driver. So the boom  
8 can be lowered further because every time you drop a potato,  
9 you're going to damage it.

10 Next slide.

11 Q Before we leave that, could we go back to that slide? At  
12 the -- the title of this is "Generation II/III Seed Harvested."

13 A Right.

14 Q Is generation -- is either of those generations suitable as  
15 a seed potato for a commercial potato grower?

16 A Yes. We rarely buy Generation II seed. It's more expense,  
17 and there's less of it. We typically buy G-III. There's --  
18 sometimes the market permits us to buy G-II.

19 Q And, when say, "Generation II" or "Generation III," are we  
20 not referring to years of development from that little bitty  
21 piece --

22 A Right.

23 Q -- into the first generation, then, that expands the second  
24 year and the third year and so on?

25 A That is correct.

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1 Q Let's go to the next slide.

2 A Okay. Here -- here's where they're going into storage.

3 And storages have really changed from -- over the years.

4 Initially, they were bulldozed into the ground because we didn't  
5 have effective heating and ventilation. And we just used the  
6 natural cooling of the earth.

7 Now we have these wonderful steel structures. You can see  
8 the polyurethane foam insulation is sprayed on them, and they  
9 have lighting down the center. You can see these corrugated  
10 tubes with little holes in them on the floor. Those are very  
11 important. That's how we move air and, in some cases, moisture  
12 and, in some cases, chemicals -- sprout control chemicals, not  
13 for seed but for commercial purposes.

14 And you can see that the very far left edge is the truck,  
15 which is backed in; and it's unloading on -- that machine has a  
16 conveyer belt there. It's called the piler. And, so, they're  
17 gently piling those to a certain depth, and they work back and  
18 forth across the face of that with each truckload laying  
19 additional ventilation as needed until they have this storage  
20 full. Once it's full, they close the doors; and they pull the  
21 temperatures down.

22 Now, for seed, we want to make sure that it's -- really  
23 goes dormant; and we're not going to treat it with sprout  
24 inhibitors because, eventually, next spring we need it to  
25 sprout. So we'll pull it down to a temperature a little bit

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1 lower than we typically would for production potatoes. And, if  
2 we -- if we did that with production potatoes, it would cause  
3 the sugar sort of problem.

4 So it's put to see sleep with temperature. We control  
5 moisture. We watch the pile. We use a little handheld device.  
6 It's an infrared gun, and it detects hot spots. And what we're  
7 looking for is biological activity. Any biological activity  
8 gives off heat. So, if we see a little hot spot as we're  
9 scanning in the pile, we got to be like a little gopher. We'll  
10 need to dig down to it and look and see what our problem is  
11 there. Often you can just get a couple of three or four or  
12 five-gallon buckets, remove sort of the start of the infection,  
13 and force a lot more air through and -- and kind of settle them  
14 back down and put them back to sleep.

15 Q Now, what we're looking at in this slide are seed potatoes.  
16 Correct?

17 A Yes.

18 Q But, if I wanted to pull out one of those and take it home  
19 and boil it and eat it for dinner, I could. Right?

20 A Yes.

21 Q Let's go to the next slide.

22 A Okay. This is a slide I took out on one of the farms that  
23 I manage, and this Mr. Olsen's equipment. You can see there's a  
24 tractor. It has a very particular split-wheel arrangement that  
25 has to do with the spacing of the rows for the -- for the row



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1 width, and it's pulling a -- a four-row potato planter.

2 Q This would be over on the left side --

3 A Behind the tractor --

4 Q -- yellow -- yellow --

5 (Interruption by the reporter)

6 THE WITNESS: I'm sorry.

7 Q (BY MR. BENTLEY) You're referring over to the left side of  
8 the slide?

9 A Well, the -- the farthest side is the tractor.

10 Q Correct.

11 A The center is the planter that's attached to the tractor.

12 And, of course, it has all kinds of electrical and hydraulic

13 controls to lift it up, to put it back down, to adjust the

14 depth. And the planter, actually, is doing a lot of things.

15 We're applying fertilizer in a banded treatment. This is one of

16 the things we do to reduce the amount of fertilizer that we use.

17 We apply it just below and to the side of the seed so that the

18 young plant doesn't have to go far for it, and it's not diluted

19 in the mass of soil. So it's there to start the plant. It's

20 called the starter or a pop-up-type fertilizer.

21 We also have a product -- several different products we can

22 use, Phymed (phonetic) and Mocap are a couple of common trade

23 names. And they're insecticides or nematicides. And they're

24 designed to protect against pests. Nematodes are very small,

25 unsegmented worms that can attack the potato; and they can

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1 really cause an awful lot of damage economically. They can come  
2 in early season. So this is a treatment that protects against  
3 wireworms and other soil pests.

4 Q So this -- this slide is showing that -- someone planting  
5 the seed potatoes. Is that correct?

6 A That is correct. This is a commercial field. The  
7 equipment you see that's yellow that's on the right-hand side  
8 has a very particular attachment. That's a specialty built  
9 attachment, and that's loaded from a truck of seed pieces. So,  
10 from the storage that we saw in the -- in the prior slide, those  
11 whole potatoes are pulled out. They're run across sizers and  
12 cutters, and they're cut into approximately two-ounce pieces.  
13 You'd have at least one eye because, if you don't have an eye,  
14 you have what's called a "blind seed piece." It will just rot.  
15 It won't sprout. It doesn't have a means to generate and -- and  
16 to come.

17 And we, then, treat that seed with a fir bark dust and  
18 often a fungicide so that we don't have Erwinia or related soft  
19 rot because we plant potatoes early in the year. They're,  
20 basically, a cool-season crop. Typical year, the very earliest  
21 of the earlies go in on Washington's birthday. The main part of  
22 the crop goes in, probably, from the last week of March through  
23 about the 20th of -- of April.

24 So that basket that the yellow machine has was all full of  
25 seed. And, if you look closely, you can actually see some seed

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1 trickling out and going down into the top of the seeder. So  
2 this is just the loading of the seeder prior to the commencement  
3 of the -- the planting process, which also applies fertilizer,  
4 also applies, you know, the insecticide, nematicide.

5 Q Next slide?

6 A Now, here, this is just a shot of the planter actually  
7 operating. If you look at the far right, you can see there's a  
8 -- kind of a light yellow tank. There's a dark green liquid in  
9 it. That's ammonium polyphosphate. It's a fertilizer I used to  
10 manufacture when I was in that business. It -- it contains some  
11 nitrogen and some phosphorus. That's our starter of material.

12 And the -- the planter has two great big sets of disk  
13 openers that actually create a furrow. They move the soil  
14 aside. Then there's a series of cups that are on a rotating  
15 wheel that is on a certain spacing based on the speed of the  
16 planter that grabs ahold of each of these seed pieces that's  
17 trickling down from the main compartment above. And, as the  
18 wheel turns, it places the seed. And, then, coming in behind  
19 that, there are two very large disk that are called "closers."  
20 And they pull that soil back up and over so that they actually  
21 create, you know, a protective soil cap so that early season we  
22 don't get freeze damage to the potatoes. So it's -- it's  
23 actually planted when we still have freezing temperatures,  
24 typically.

25 And, then, in a later process, two to three weeks later, we

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1 have what's called "drag off" where we pull a machine and we  
2 knock the tops of those hills off and reform those furrows.

3 Q Are we at the end of the slide show?

4 A Yes, we are.

5 Q Okay.

6 A Okay. Now we've got the crop up. My most advanced  
7 potatoes are just a little smaller than this particular slide  
8 right now. This is a cultivation procedure where we're usually  
9 doing two things at once. In this particular field, they're  
10 only doing one thing. They're just cultivating. So they reform  
11 the rows, and they're destroying any weeds that have come.

12 We often, in this country because we have such high  
13 temperatures in the summer, we make very heavy applications of  
14 water. We use an additional piece of machinery called the  
15 "Dammer Diker." And it looks sort of like a little ferris wheel  
16 in the back except it doesn't have the -- the rim. It's a  
17 series of spokes that have shovels on them. And, as they turn,  
18 they come and they dig a pit about the size that you could put a  
19 brick in as it goes down the row and, then, that creates a  
20 little tiny reservoir. So, when the circle comes around and we  
21 put on 7/10 or 9/10 of an inch water in a relatively short  
22 period of time, it doesn't runoff. It will stay in that little  
23 reservoir; and, then, over the next hour or two, it will soak in  
24 and provide moisture for the crop.

25 Next. This is sort of a -- just a schematic drawing out of

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1 one of my textbooks that shows the potato plant and its major  
2 parts. And you'll see at the very top it identifies a flower.  
3 My sister did her Ph.D. at Cornell on one of -- one part of it  
4 was on trying to make true seed for potato. It didn't work. So  
5 she ended up restarting and doing it on sweet peppers.

6       We don't use that, but that's a function of the plant. And  
7 its an indicator to field people. By variety, each variety has  
8 a different sort of flowering pattern. And a lot of times, if I  
9 drive past a field and I see a beautiful set of flowers on it, I  
10 immediately stop because flowering, in a lot of varieties, is an  
11 indicator of stress. One of the genetic things about plants is  
12 that they are programmed to survive. The plant knows two ways  
13 to survive. It makes tubers. It makes flowers. Okay. Even  
14 though the seed doesn't come true, which is why we don't use it,  
15 it makes flowers.

16       Then you have the leaflets that come down, and you can look  
17 at the larger leaflets in the bottom; and you can see they have  
18 an arrangement where they're a little like your hand. There's  
19 kind of a -- a central leaf that points straight out; and, then,  
20 there are several side leaves to each side of that. And -- and  
21 potatoes are typically what we call "alternately leafed" so they  
22 have a series sort of like you're climbing up a tree. They have  
23 alternately spaced leaflets.

24       About the fourth one down is the one that's really the  
25 first mature leaflet. That's the part of the plant that we

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1 sample when we're looking to monitor the -- the nutrient status  
2 of the plant, and it's call a petiole. It's just a fancy word  
3 for the stem that supports the leaflets.

4 As you get to the soil line, you can see we have the root  
5 structure. We have the tubers. These are obviously modified  
6 underground stems. There are several sets of tubers. You can  
7 see here (indicating) in different stages the old seed pieces  
8 shown. In some instances, even at harvest, I'll get small,  
9 intact parts of seed pieces that will make it up the chain.  
10 It's rare, but it -- it happens.

11 And the different stages of the tuber is very interesting  
12 because it represents critical growth stages for the potato  
13 plant. The initial tuberization here typically takes place in  
14 the early crop in late May. In the late crop, it's in early  
15 June to mid June. And anything environmental that happens to  
16 the plant during that tuberization process can cause either good  
17 things to happen or bad things to happen. If the plant gets  
18 under a lot of stress, it will actually reabsorb and abort a  
19 tuber. Sometimes, if the tuber's already formed, it will cause  
20 the tuber to be malformed. It will have a really funny shape to  
21 it.

22 So you can see, also, the plant has a root system. It's a  
23 very modest root system. The -- the potato plant feeds  
24 substantially off that mother seed piece for really the first  
25 month. And, then, the soil temperatures come up and the plant

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1 begins to develop and grow. We're really looking to monitor the  
2 moisture in just the top two feet of the -- of the soil for  
3 potatoes. They're not a deep-rooted plant.

4 THE COURT: Counsel, we need to move this along.

5 MR. BENTLEY: Yes, your Honor.

6 THE WITNESS: Next.

7 Q (BY MR. BENTLEY) Another slide? All right.

8 A You can see here from the title this just shows that we  
9 have two ways to control insects. One is we let mother nature  
10 do its good thing. We do work closely with what's called  
11 "integrated pest management," and part of that is trying not to  
12 use very toxic insecticides to control pests. This is, on the  
13 left side, the victim here is a -- probably a second instar of  
14 the Colorado potato beetle, which is the most common of -- of  
15 potato pests.

16 If they get away from us -- let's go to the next slide --  
17 sometimes we come in and we spray, and this particular job is  
18 being done by ground rig. We rarely use ground rigs here  
19 because our plant protection chemistry from planting will often  
20 carry us until we have complete row closure, and we don't want  
21 to drive over those vines.

22 Q Let's go to the next slide, yeah.

23 A Yeah. So this is the gentleman we usually call. This is  
24 an Air Tractor 801. Several of the local applicators use this  
25 exact machine. And, as you can see, that's a very fast way.

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1 He's doing about 130 miles an hour right there.

2 Finally, we get, you know, to the harvest phase, hopefully  
3 soon to pay day. This is just a different view of a -- of a  
4 harvester. Same things we talked about earlier. You can see  
5 the spread wheel sort of on the -- the tractor in order not to  
6 run over and damage the potatoes. And, then, the digger's  
7 picking them up. And, then, they're very carefully being piled  
8 with a minimum drop onto the ten-wheeler that's shown there.

9 Q All right. Is that the end of your slide for --

10 A That is.

11 Q -- your PowerPoint?

12 A That's Potatoes 101.

13 MR. BENTLEY: Would this be a good time for a break?

14 THE COURT: It is. Let's take our break at this time.

15 (Jury out at 2:42 p.m.)

16 (Jury in at 3:02 p.m.)

17 THE COURT: Please, be seated. Let's resume. Okay.

18 Q (BY MR. BENTLEY) Mr. Turner, I'd like you to describe the  
19 influence of the market on potato production in Washington.

20 THE COURT: In general?

21 MR. BENTLEY: As to the processor, french fry  
22 processor, and the french -- fresh market.

23 THE COURT: Thank you.

24 THE WITNESS: Well, there are two separate markets;  
25 and, in addition to the french fries, we have a lot of other



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1 process potatoes. The fresh market is really the source of wild  
2 gyrations. And, at times, some of that excess can be picked up  
3 and utilized on the process side and sometimes it cannot. When  
4 there's a shortage, there's a shortage on both ends. The price  
5 will go wild on the fresh side; and, if the french fry guys are  
6 short, they'll pay exorbitant, you know, prices for any  
7 available open uncontracted potatoes.

8 Q (BY MR. BENTLEY) Have there been some particularly bad  
9 market years over the last 15 years or so or 20?

10 A Yeah. I -- you know, other testimony has brought out 1996  
11 and 2000 are probably the outstanding bad years, although, 2012  
12 wasn't much of a picnic either.

13 Q Are you familiar with the concept of dual-purpose potatoes?

14 A I am.

15 Q Can you tell us what that entails?

16 A Well, really, since I can remember, there's always really  
17 just been, you know, three kinds of potatoes: Specialty  
18 potatoes, which would be, like, the little reds, white-skinned  
19 potatoes, the Yukon Golds, the yellow potatoes, and, even in  
20 recent years, purple and blue potatoes. Specialty. That's a  
21 very, very limited market. Then there's the general fresh  
22 market, which is a Russet-type spud.

23 And, when I first started, it was a variety called Norgold,  
24 which was a North Dakota release. 1987, a new variety came out.  
25 It was significantly improved, Norkotahs. In other states, they

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1 don't grow a lot of these varieties. But here that's been sort  
2 of the -- the mainstay in recent, excuse me, years on the fresh  
3 market side.

4 On the process side, really, you go back and look at the  
5 seed sales. And they tell you that the Russet Burbank was king,  
6 really, for a long time until 12, 15 years ago, when the  
7 Tri-State Variety Development Programs and other programs  
8 started to bring in replacement varieties. Because, although  
9 the Russet Burbank was a fairly high yielder, it was very  
10 disease susceptible to certain problems. And, occasionally, it  
11 was a -- process usage was low. You'd get a low percent of U.S.  
12 No. 1s and 2s. It's the original dual-purpose potato. In  
13 Idaho, most of the potatoes packed are Russet Burbanks whereas,  
14 in Washington, they're mostly the Norkotahs or the newer  
15 varieties that were developed specifically for this dual  
16 purpose.

17 And the idea of dual-purpose is to give the grower an  
18 option so that, in this changing market, which shifts sometimes  
19 day-to-day between hot, medium and cool, if you have the ability  
20 to capitalize on a -- on a really hot market, we can see returns  
21 that are really high. You know, I know that other witnesses  
22 have testified about prices in the 100, \$120-ton range. I've  
23 seen it spike up to \$300. The ability to capitalize and -- and  
24 hit that fresh market, if you have a shed that you can sell to  
25 and if the market's that high, it is very important because, in

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1 many years, you don't make money on the fresh side. Your  
2 safety, your insurance program, is the ability to sell them to  
3 process usage, whether it's french fry, other frozen, dehy chip,  
4 some other use.

5 And having a dual-purpose potato is obviously a concept  
6 that's relatively recent, but it's become the focus of attention  
7 through the breeding program, for the development program.  
8 We've gone from, in 20 years, essentially, having very little  
9 interest or understanding of that market to now a significant  
10 portion of the market is -- is gravitating that direction.

11 Q Are you familiar with the quality standards that were  
12 contained in the contracts between Tri-Cities Produce and Lynn  
13 Olsen or Olsen Ag?

14 A I am.

15 Q And, in particular, are you familiar with the specific  
16 gravity and bruise-free standards?

17 A Yes.

18 Q Can you -- excuse me. Can you explain how those factors  
19 would relate to the dual -- dual-purpose potato that you've just  
20 described?

21 A Bruise is an important factor for any sale because you're  
22 going to get graded, either by the USDA standard or the WSDA  
23 standard in the fresh shed or, you know, the USDA standard  
24 process grade if you go to the process side. So bruise is  
25 important always.

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1 Specific gravity is more important as it relates  
2 specifically to certain of the process uses. In particular, the  
3 frozen process usage. So putting those elements in the contract  
4 is an affirmative step and it's also a declaration saying, "I  
5 want to preserve my option if it's a red hot market and I can  
6 hit it, but I'd like to have very high standards" because most  
7 of the process usage is preseason contracted. They're very  
8 careful to not expose themselves to risk.

9 The big three companies, they're run by professional. They  
10 know exactly how much product they're going to need. What they  
11 can't forecast is exactly how much is going to be produced. So  
12 there's always a little bit of open that they have to pick up in  
13 most years, and you're hoping to hit that market when there's a  
14 shortage. If you have high specific gravity, you have a low  
15 bruise, you have a premium product that's very enticing to a  
16 processor.

17 Q In your opinion, were the specific gravity requirements in  
18 the contracts appropriate for the purpose of producing a  
19 dual-purpose potato?

20 A I think they were designed, really, expressly for that  
21 purpose.

22 Q And what about bruise? The 90 -- 90 or 80 percent bruise  
23 free?

24 A Yes. Again, the higher quality the potato, the more people  
25 will compete for it, the higher price will be paid for it.

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1 Q There's been evidence that Mr. Olsen was growing Norkotahs  
2 in '01 and grew Norkotahs again in '02. I'd like to ask you  
3 about that. How easy is it for a grower to change varieties on  
4 a relatively short notice?

5 A Well, it's sort of like doing 30 knots in a 900-foot long  
6 aircraft carrier and stopping on a dime and turning it around.  
7 The process of seed production that I discussed a little bit  
8 earlier and a lot of the other witnesses have touched on is, you  
9 know, a three- to four-year process. So the seed that we  
10 planted a month or so ago was stuff that was developed  
11 initially. Somebody initially made a decision, starting with  
12 the plantlet's, three or four years ago. So you can't just say,  
13 "Oh, I'm going to change colors and go to this other color."

14 The seed producers try and anticipate, to some extent, the  
15 market. But right in 2000, 2001, 2002, that's the beginning of  
16 sort of an industry recognition of the need for the dual-purpose  
17 potato. So availability was extremely limited or nonexistent, I  
18 would say, in 2001, starting to become available in '02, more  
19 widely available in '03 and '04.

20 Q So, if, hypothetically, Mr. Olsen's harvesting his '01 crop  
21 in September of '01 and sees test results showing that his crop  
22 is not making the quality standards, would it have been possible  
23 or feasible for him to call up his seed grower and ask them to  
24 produce a different variety for him in '02?

25 A No. At the same time that he's harvesting his 2001 crop, 4

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1 or 500 miles away the seed grower is harvesting the crop that  
2 will be the seed for the 2002 crop.

3 Q Are you familiar with the term "processor" and its role in  
4 this case?

5 A Yes.

6 Q Can you tell us what that term means based on your  
7 familiarity with the potato industry?

8 A Well, it's a term I use. And I use it to describe what  
9 happens, the disposition of the harvested tuber. For example,  
10 Tri-Cities Produce is primarily a process fresh packer; but they  
11 have substantial bulk sales of process, potatoes that go off to  
12 a different processor. You have process frozen french fry. You  
13 have process frozen other: Tater Tots, wedges. You have  
14 process cooked fresh. Like, there's a Reser's plant in Pasco.  
15 It makes potato salad. So there's -- any time that you  
16 materially change something, it's a process.

17 In the fresh side, you take a product that's not salable as  
18 it comes off the truck. As it comes off the truck, it's dirty.  
19 There's little pieces of vine. Occasionally, there's rocks.  
20 There may be cut and -- and rotted potatoes mixed in. You have  
21 to go through a process of cleaning, sorting by grade, sorting  
22 by size, and packaging and shipping. And that's a -- that's a  
23 material process. So we call it a "process fresh pack."

24 Q Are you familiar with the specific gravity requirements in  
25 the contracts that were at issue in this case?

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1 A Yes.

2 Q And they were 1.079 the first year and, then, 1.078 in the  
3 ensuing years. Is that correct?

4 A Yes, that's correct.

5 Q Do you have a professional opinion as to whether those  
6 specific gravity levels were reasonably achievable for the  
7 grower?

8 A Well, I -- I think it depends on the grower. And it  
9 depends to a certain extent on the season and a certain extent  
10 on the location and a lot on the particular culture.

11 Q When you say the "culture," you mean the techniques of the  
12 grower?

13 A Yes.

14 Q Tell us more about that, if you would.

15 A Well, it's not for amateurs. I mean, there's nothing about  
16 potato growing that's really for amateurs. It's a very  
17 intensive crop. It's one of the highest risk crops that we  
18 grow. Everything in the world likes to eat a potato. And we  
19 have the seed issue. It's, basically, a cool season crop that  
20 we've adapted to a seasonally very hot climate. And the -- only  
21 the upper tier growers, really the top half, I think are capable  
22 of achieving gravities like this. And, even then, they're going  
23 to have to have a little assistance from mother nature.

24 Q You've been present during the testimony in the trial.

25 Correct?

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1 A I have. I've been sitting in the back there taking notes.

2 Q And did you -- do you remember hearing the testimony about  
3 the results from the Western Potato Trials or the Tri-State  
4 Trials?

5 A Well, both.

6 Q Yes. And do you have an opinion as to the significance of  
7 those test results for one of the top tier potato growers like  
8 Mr. Olsen?

9 A Well, you have to understand the purpose of the trials and  
10 how the trials are actually constructed. The typical trial --  
11 and I go -- we have a Potato Field Day at the Othello Research  
12 Station the third week of June every year. And they plant three  
13 rows of each variety. Norkotahs were planted as one of the  
14 three standard varieties against numbered compounds -- numbered  
15 -- numbered lines that were being developed so we can evaluate  
16 against some kind of a standard. And they're fairly small  
17 plots. They plant one plant of blue potatoes at the beginning  
18 of each row. They plant, then, 20 feet of three rows and, then,  
19 plant another set of blue plants to separate so that, when  
20 they're harvesting and they hit the blue potatoes, they know  
21 they're at the end of the plot.

22 So, of the three rows, they then have, usually, three or  
23 four replicates that are randomized. They just take and roll  
24 the dice. They have a plot plan where they have -- the  
25 different plots are numbered. And they just roll the dice and



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1 start assigning them randomly to try to get the variables out.

2 Then, out of the three rows in each plot, they only harvest  
3 the center row. So the total data set from these trials would  
4 be about two-thirds the side of the jury box. It's fairly  
5 small. I'm conducting herbicide residue studies this year with  
6 potatoes. My plots are four rows wide and they're 300 feet  
7 long. They're 15 times larger.

8 Q And the purpose of the -- are we talking the Western Trials  
9 or the Tri-State? Both?

10 A Well, they're -- they're both -- they're both quite  
11 similar, and they have somewhat similar objectives.

12 Q Their purpose is to test the overall characteristics of --  
13 of the test potatoes. Is that correct?

14 A Yes. And some years they've actually done the trials in  
15 commercial fields. They'll just not plant a little section.  
16 And, then, they'll bring their little research planter over; and  
17 they'll plant that little section. And they use sort of common  
18 commercial practices to try and mimic the results the average  
19 grower would get. They have no particular focus on any specific  
20 parameter. So the fertilizer, irrigation, the timing of the  
21 planting, the timing of the harvest, none of that is -- is  
22 designed or focused culturally on a specific issue.

23 Instead, they're just saying, "Oh, we're going to try to  
24 mimic Joe Potato Grower. And there's many different practices  
25 so we're just going to shoot for an average."

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1 Q They're not focused on that specific gravity characteristic  
2 of their test potatoes.

3 A They are not.

4 Q Do you have an opinion with respect to the bruise-free  
5 levels contained in the contracts?

6 A Yeah. The bruise-free levels in the contract, typically  
7 the initial year, are high. I think they're achievable, and I  
8 speak from direct experience because I do a lot of forensic work  
9 where something bad has happened to a potato field. One of the  
10 things that I have to do is, at harvest, evaluate -- let's say  
11 the west half of the field was damaged but the east half is  
12 undamaged. We need to make a comparison. So, you know, on a  
13 comparison basis, you know, you're -- you're trying to evaluate  
14 one piece of data against another.

15 Q You've heard the testimony of Dr. Stark and others  
16 concerning the potential negative impacts of heat on a tuber.  
17 Correct?

18 A Yes.

19 Q We also heard the testimony of Dr. Daly with regard to the  
20 average maximum monthly temperatures. Correct?

21 A Yes, I did.

22 Q What is your opinion with respect to the relationship  
23 between high heat and specific gravity in a potato?

24 A Well, it's one of about a dozen parameters that is a  
25 significant influence.

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1 Q Can you give us more detail about how a potato -- say, when  
2 the tubers are about to be set, how a potato responds to high  
3 heat?

4 A Well, it depends. It depends on the conditions preceding  
5 the heat event, whether it's been cloudy and cool. The plant  
6 has a daily cycle, a diurnal cycle, a day/night cycle. And the  
7 plant, in its simplest term, is a water pump in the same way  
8 that an internal combustion engine is an air pump. Everything  
9 physiologically is driven by the availability of water. So the  
10 plant has to osmotically regulate itself or it will wilt and be  
11 injured or die.

12 And one of the ways that the plant does that is it's  
13 genetically coded to sort of monitor "What's the weather like."  
14 If it's cloudy and it's cool out, the plant makes very little  
15 epicuticular deposition of wax. You've seen a newly washed car  
16 where the -- the water beads up because it's nicely waxed or  
17 it's a new car. And, you know, plants are the same way. They  
18 use this cycle of sort of, "Okay. It's 70 degrees out. It's  
19 cloudy. There's not a lot of wind. I can afford to lose a lot  
20 of water." So it doesn't deposit a lot of wax.

21 And you can see this same effect for herbicides. One of  
22 the herbicides that we use has a label that says don't put this  
23 on unless you have three sunny days before the application  
24 because those sunny days will trigger the plant to produce that  
25 wax and it will mean less of the chemical will go into the

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1 potato. So the potato plant will be able to metabolize sort of  
2 what's going on and not get a toxic load.

3 So the amount of solar radiation; whether there's wind; the  
4 speed of the wind; the duration of the wind, which we measure as  
5 what's called "total wind run" on the WSU Ag Weather Net System;  
6 relative humidity. If it's low humidity, there's a greater draw  
7 to pull moisture out of the plant. And, yeah, you have heat  
8 transfer that's -- that's occurring and that direct solar  
9 radiation is actually physically heating the plant.

10 Now, a certain amount of heating is good. The basic  
11 biological law of Q10 is that, for every 10 degree rise in  
12 centigrade you get, the rate of biological reactions doubles.  
13 The problem is -- is that potatoes are a cool season plant; and  
14 their limit is -- you know, for really efficient operations, is  
15 up to about 90 degrees. Once you get above 90 Farenheit, the  
16 potential for heat injury is there.

17 One of the biggest factors of heat injury is: What's the  
18 recovery cycle? Because we're always thinking about the daytime  
19 because we go home and we go to bed and it's dark out. The  
20 plant respire or catches up and does all its other  
21 physiological functions at night. If the nighttime temperatures  
22 drop down into the -- into the high 40s, even if you've had a  
23 100-degree day, the plant has a substantial ability to recover.  
24 It can rehydrate itself, and the amount of stress is limited.  
25 It can, then, face another hot day. But, if you get the evening

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1 temperatures, night temperatures, stay in the mid to upper 50s  
2 or even in the 60s or 70s, it has less ability to recover. So  
3 that's a very significant factor.

4 Another factor is, early in the season, the soil. The  
5 plants are designed to intercept as much light as possible.  
6 It's the photosynthesis that produces the sugars and the  
7 carbohydrates. But, early in the season, we haven't closed the  
8 rows yet. You have the sun directly hitting the soil. And, in  
9 some instances, you'll actually get physical burning of the stem  
10 right where it meets the soil because the soil gets 120, 130  
11 degrees Farenheit. It will burn the plant. And there's also  
12 some light-colored soils that are just like a reflector.  
13 They're -- they're like tinfoil. And they'll shine the light up  
14 underneath the plant and the plant will get sometimes necrosis.  
15 You get some burning on the leaves.

16 THE COURT: You need to ask some other questions.

17 MR. BENTLEY: Yes, your Honor.

18 Q (BY MR. BENTLEY) So, with reference to a specific gravity,  
19 are there cultural practices that a grower can use to enhance or  
20 improve the gravity of his crop?

21 A Yes. And it's a host of things that you do together.  
22 There's no single factor that stands out alone. But, you know,  
23 the beginning of it all is irrigation management. If you have a  
24 modern, efficient, effective irrigation system and you have  
25 ready access at all times to moisture, you do not allow the

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1 soils to be depleted so that the plant enters a cycle of stress  
2 before the next irrigation comes around.

3 If you manage your fertility. Fertilizers are double-edged  
4 swords. If you put on high rates of fertilizers in addition to,  
5 maybe, some environmental issues you don't want, you have high  
6 expenses; but it stimulates the vegetative part of the plant.  
7 The plant wants to produce vine. We don't harvest vine. We  
8 harvest tubers. You have to have this balance in your fertility  
9 program that, earlier in the season than later, you need to  
10 start dialing back, particularly, on nitrogen, which is the  
11 major plant growth nutrient. And, if you do this, you still  
12 have an effective canopy for photosynthesis; but you're not  
13 promoting vegetative growth. You're, instead, physiologically  
14 directing the plant to push more of those solids down into the  
15 tuber and that has a positive effect on specific gravity.

16 Q And it's your opinion that the standards in the contract as  
17 to specific gravity were achievable?

18 A You know, in the -- in the first year at 1079 (sic), that's  
19 a fairly high bar. The next year's, when it drops to 1078 (sic),  
20 particularly with the introduction of the new dual-purpose  
21 varieties, those are generally achievable.

22 Q And those varieties are Gems and -- what are they?

23 A Well, at that time, Gems and Westerns.

24 Q Okay.

25 A Both are a Russet-type potato.

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1 Q And it's your opinion that, as you've said, heat can impact  
2 the specific gravity in a tuber?

3 A Absolutely. There's research that's been conducted,  
4 specifically here in the Columbia Basin, by Washington State  
5 over many years that establishes that.

6 Q Is your opinion on that issue form -- influenced by  
7 publications in professional journals?

8 A Yes.

9 Q I'd like to show you Exhibit 1521, in evidence, on the  
10 ELMO.

11 (Pause in the proceedings)

12 Q (BY MR. BENTLEY) Is this one of the articles that has  
13 influenced your opinion?

14 A Yes.

15 Q And who's this by?

16 A Dr. Davenport of WSU.

17 Q Are you familiar with her as an expert?

18 A Yes. I've been to many Potato Field Days and heard her  
19 speak.

20 Q And, for the record, would you read the highlighted  
21 material on this page?

22 MR. BENTLEY: This is in evidence.

23 THE COURT: Yep.

24 THE WITNESS: "Climatic conditions will determine if a  
25 growing region has a 'good' or 'bad' year for gravity." "During

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1 the three years of this study, the 1998 growing season was  
2 extremely hot (Figure 1), and tuber specific gravity was low  
3 throughout the growing region."

4 Q (BY MR. BENTLEY) Now, I'm showing you -- this should not  
5 be for the jury -- what has been marked as Exhibit 1515. Do you  
6 recognize that?

7 A Yes, that's a chapter out of Dr. Stark's book.

8 Q Oh, okay. I'll withdraw that. Let's go to -- well, yeah.  
9 Let's go to 1545. No. Let's stay with 1515. It's the same.

10 MR. BENTLEY: I offer this into evidence.

11 MR. TORNABENE: No objection.

12 THE COURT: Admitted.

13 (Exhibit No. 1515 admitted into evidence)

14 Q (BY MR. BENTLEY) And what does Dr. Stark tell us in the  
15 highlighted material at the bottom?

16 A The subheading is "Environmental Factors That Influence  
17 Specific Gravity." "Air and soil temperatures are the primary  
18 environmental factors affecting specific gravity of irrigated  
19 potatoes. Warm days (80° to 90° F) and cool nights (50° to  
20 60° F) provide optimal conditions for producing high specific  
21 gravity tubers. High soil temperatures have a direct effect on  
22 tuber physiology and inhibit starch deposition. Other weather  
23 conditions can also affect tuber specific gravity. High  
24 evaporative demand caused by low relative humidity, high solar  
25 radiation, and/or high wind speed can also reduce



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1 photosynthesis."

2 Q Are you familiar with a publication known as the Valley  
3 Potato Grower?

4 A Yes.

5 Q Is that the official publication of the Northern Plains  
6 Potato Grower Association?

7 A Believe it is.

8 Q Okay. I'd like to show you, not for the jury,  
9 Exhibit 1508. Does that appear to be the cover of the Valley  
10 Potato Grower, September/October, 2012, issue?

11 A Yes.

12 MR. BENTLEY: I offer Exhibit 1508.

13 MR. TORNABENE: Voir dire on this briefly?

14 THE COURT: Yes, you may.

15 MR. TORNABENE: Mr. Turner, the Valley Potato Grower.  
16 How -- how is that publication generally utilized in the  
17 industry?

18 THE WITNESS: It's a trade publication.

19 MR. TORNABENE: And, if you could, please, explain  
20 what you mean by a "trade publication" in this context.

21 THE WITNESS: Its target is potato researchers, potato  
22 growers, extension personnel, processors, you know, fresh  
23 process. Anybody who's affiliated with the -- the business;  
24 But, in particular, it's focused on the grower.

25 MR. TORNABENE: Okay. And who or what entity puts

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1 this together?

2 THE WITNESS: I'm sorry. I don't understand.

3 MR. TORNABENE: What group puts this together? I  
4 mean, what -- what entity?

5 THE WITNESS: Well, "Official Publication of the  
6 Northern Plains Potato Growers Association."

7 MR. TORNABENE: Okay. And what is that?

8 THE WITNESS: Well, it's a grower organization.

9 MR. TORNABENE: All right. And where are they  
10 located? Is it here in the Columbia Basin or --

11 THE WITNESS: No, no, no. No. This is North Central.

12 MR. TORNABENE: Okay. And are you aware of how this  
13 is relied upon by agronomists?

14 THE WITNESS: Well, most agronomists that are potato  
15 growers will read a lot of these. Some of them come in  
16 electronic format. Some are in print.

17 MR. TORNABENE: Okay. So they read them, but how do  
18 they rely on them?

19 THE WITNESS: Well, you're looking to see what's  
20 happening with the crop. We're all interested to see how other  
21 regions, in particular, are doing since their impact on the  
22 market is going to raise or lower our prices.

23 MR. TORNABENE: I see. Thank you. No objection.

24 THE COURT: Admitted.

25 (Exhibit No. 1508 admitted into evidence)

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1 MR. BENTLEY: May it be published to the jury?

2 THE COURT: It may be.

3 Q (BY MR. BENTLEY) And I'll show you the article: Article  
4 by Andy Robinson, Extension Potato Agronomist, North Dakota  
5 State University. Why don't you read for us the first sentence  
6 of the paragraph that I'm pointing to.

7 A "Optimum potato growth is considered to be 74°F during the  
8 daytime and 54°F at night."

9 Q Why don't you continue with the remainder of that block of  
10 highlighted material.

11 A "Higher temperatures cause photosynthesis to decline and  
12 maintenance respiration to increase. Photosynthesis is  
13 responsible for over 90% of the dry weight. Photosynthesis uses  
14 sunlight, carbon dioxide, and water to produce starch in tubers.  
15 Maintenance respiration is when the plant expends energy to  
16 repair and maintain itself. As a result, high temperature and  
17 water stress over a ... period of time -- over a prolonged  
18 period of time ..." Should I finish the sentence there?

19 Q Finish with the highlighted material at the top of the next  
20 column.

21 A Okay. Let me start that sentence over. "As a result, high  
22 temperature[s] and water stress[es] over a prolonged period of  
23 time can increase misshapen potatoes, encourage second growth,  
24 and can reduce yield and quality."

25 Q And, then, the highlighted material in the third column to

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1 the right.

2 A "Additionally specific gravity can be reduced because the  
3 amount of starch available for transport from the leaves to the  
4 tubers is reduced."

5 Q Finally, I'd like to show you Exhibit 1535. Can you  
6 identify that?

7 MR. BENTLEY: This is not for the jury, at this point.

8 THE WITNESS: Yes, I can.

9 Q (BY MR. BENTLEY) What is that?

10 A This is a written version of a paper I heard Mike Thornton  
11 give at the Washington Potato Conference.

12 Q And who -- is Mike Thornton related to another expert who  
13 has not yet testified in this case?

14 A Big brother, Rob Thornton; and they're both sons of the  
15 elder Rob Thornton who was, for 30 years, Mr. Potato at WSU.

16 Q And where was this presentation by Mike Thornton, that is,  
17 Exhibit 1535, presented?

18 A For many years, the potato conference was at the Big Bend  
19 Community College Facility in Moses Lake.

20 Q And when was this presented, based on the material at the  
21 bottom of the page?

22 A Oh, 1991. This is going back a ways, yeah.

23 MR. BENTLEY: I offer Exhibit 1535.

24 MR. TORNABENE: No objection.

25 THE COURT: Admitted.

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1 (Exhibit No. 1535 admitted into evidence)

2 Q (BY MR. BENTLEY) Does this paper, in the highlighted  
3 material, essentially, repeat the materials that we've already  
4 gone over as to the impact of heat on specific gravity?

5 A It does.

6 Q And why don't you read us just the first sentence at the  
7 top.

8 A "Temperature is one of the most important factors  
9 influencing potato plant growth, tuber yield and quality."

10 Q And the last sentence of that same paragraph.

11 A "Low specific gravity is one of the main problems that was  
12 experienced by the Northwest potato industry during 1990."

13 Q Thank you. You were present when Dr. Daly testified about  
14 the average maximum monthly temperature in the basin during '01,  
15 '02, '03, and '04?

16 A Yes.

17 Q Is there anything about that testimony that causes you to  
18 change your opinion about the relationship between heat and  
19 specific gravity?

20 A No.

21 Q Do you feel that that information is at all relevant to --

22 MR. TORNABENE: Objection, your Honor. Relevancy is  
23 for the jury to determine.

24 THE COURT: I agree in that sense. Different --  
25 perhaps same issue but a different approach.

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1 MR. BENTLEY: All right.

2 Q (BY MR. BENTLEY) In your work as an agronomist, if you  
3 were attempting to consider whether a crop had been affected by  
4 high -- a potato crop had been affected by high heat, would you  
5 rely on average monthly temperatures for the month in which the  
6 damage was said to have occurred?

7 A No, I wouldn't even look at it.

8 Q Please tell us why.

9 A Anyway, all we can understand that, if the temperature  
10 range in a month was 0 degrees and 120 degrees, the average  
11 temperature wouldn't tell us whether the potato plant would  
12 thrive. When you pool that large amount of data together, you  
13 wipe out the ability to discern patterns or specific events. I  
14 spoke earlier of the importance not just of the daytime high  
15 temperature on an individual day but, within that 24-hour  
16 diurnal cycle, what was the nighttime temperature?

17 And, in my experience, two- or three-day events,  
18 particularly if you add wind to the equation, particularly if  
19 you're on very coarse, sandy ground that doesn't hold a lot of  
20 water, even if you've got your circle running as fast as you  
21 can, if it's 100 degrees and it's blowing 20 or 30 miles an  
22 hour, you cannot keep up. You will have damage. So, looking at  
23 a blended number, it's just the wrong data set. It doesn't tell  
24 you anything.

25 Q What about Dr. Jeffrey Stark's testimony concerning the

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1 Tri-State Trials or the Western Regional trials?

2 A I was puzzled when I first saw that. Dr. Stark is a very  
3 experienced, talented researcher. And, again, the data set that  
4 he chose, particularly in those R-squared diagrams, was puzzling  
5 to me. And I studied them for a while and listened to his  
6 testimony and thought about it. Two things occurred to me.

7 The first is that mathematically there isn't much of a  
8 change. If you take the average mean monthly high temperature  
9 in Honolulu and insert it into that equation, you're going to  
10 get a very similar R squared. And you kind of know you're going  
11 to get that because of that extreme scattering of the data  
12 points. And, assuming that there was some effort made to try  
13 and uniform the plots -- and Dr. Folwell talked about this at  
14 length yesterday -- which is virtually impossible when you have  
15 them in many different geographic areas, different planting  
16 dates, different culture, different fields, different  
17 researchers, you get a variation just from that.

18 But the year-to-year variation is -- when I look at it, to  
19 me it explains the very close relationship between weather and  
20 variation of specific gravity because, if the University system  
21 is making a good-faith effort to try and do the plots with some  
22 uniformity from year-to-year in terms of their practices and  
23 planting dates and everything else, what else explains the  
24 scatter in the diagram? Why is it way up here (indicating) one  
25 year and way down here (indicating) the very next year?

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1 Something has to explain that. And it's not 31 days of data  
2 pooled.

3 MR. BENTLEY: No further questions.

4 THE COURT: Anyone else for this witness on the  
5 defense? Okay. Cross examination.

6 MR. SMITH: I have a few questions, your Honor.

7 THE COURT: I'm sorry, Mr. Smith. Go right ahead.  
8 You may proceed.

9 MR. SMITH: Thank you, your Honor.

10

11 CROSS EXAMINATION

12 CROSS BY MR. SMITH:

13 Q Mr. Turner, I just have a -- a few questions for you. As  
14 you know, I represent Jeffrey Gordon. And I wanted to touch on  
15 the -- the last part of your testimony first regarding this heat  
16 issue. Let me try to be a little bit specific. Do you -- are  
17 you aware of the area outside of Pasco in the Dogwood and Cherry  
18 areas that's been described to me?

19 A Very familiar, yes.

20 Q All right. And -- and, even more specifically, are you --  
21 do you know whether or not, in 2003, Jeff Gordon had fields in  
22 that area?

23 A He did.

24 Q All right. And are you -- are you aware that the  
25 Hanford -- or what the Hanford Meteorology Station is?



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1 A Yeah. I believe that's the one that Battelle runs.

2 Q All right. And that's just across the river from that  
3 Dogwood -- Dogwood area. Is that what it's called?

4 A Yeah. It's just to the west.

5 Q All right. I'm -- I want to show you what's been marked as  
6 Defendant's Exhibit 4139.

7 MR. SMITH: Just for the witness at this point, your  
8 Honor.

9 Q (BY MR. SMITH) And let me ask you, sir, if -- if you've  
10 had a chance to -- to go over this particular exhibit at my  
11 request.

12 A Yes, I've seen this.

13 THE COURT: Use the microphone.

14 Q (BY MR. SMITH) All right. And the -- this is data that is  
15 produced by the Battelle, Hanford Meteorological Station.  
16 Correct?

17 A Yes.

18 Q And it is one -- I think you -- you mentioned a couple  
19 services. Was one, like, Agri-Med (sic)? Is that a --

20 A Ag Weather Net. It's Washington State University's  
21 agricultural meteorological service. And they've got, I think,  
22 over a hundred reporting stations take data every 15 minutes.

23 Q The -- and -- and are you -- are you aware that this -- the  
24 -- the information from the Hanford station -- it's -- it's  
25 publicly available information? Is that correct?

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1 A Yes, I've accessed it.

2 MR. SMITH: I move for the admission of 4139.

3 MR. TORNABENE: No objection.

4 THE COURT: Admitted.

5 (Exhibit No. 4139 admitted into evidence)

6 Q (BY MR. SMITH) Sir --

7 MR. SMITH: Can we show this to the jury?

8 THE COURT: You may publish as you wish.

9 Q (BY MR. SMITH) Now, this particular exhibit is with regard  
10 to the -- the year 2003. Do you agree with that?

11 A Yes.

12 Q And I'm -- I'm showing you here (indicating) on the left  
13 side -- it kind of runs through the -- is that the days of the  
14 month?

15 A Yes.

16 Q Okay. And then --

17 THE COURT: Before you start making some other  
18 adjustments, why don't you adjust that microphone. Bend it to  
19 your right. And, then, when you're over the ELMO, you'll be  
20 able to utilize it. Thanks very much. That's good.

21 MR. SMITH: I always appreciate your assistance, your  
22 Honor.

23 THE COURT: Just trying to help you, Mr. Smith. Go  
24 right ahead.

25 Q (BY MR. SMITH) Sir, when you were talking about the -- the

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1 affect of -- of temperature and how -- just simply an average  
2 with regard to temperature, I mean, is -- is -- this is my word  
3 not yours, I think -- but is, essentially, meaningless in making  
4 these determinations. When we look at the temperature data  
5 here, can you -- can you give us an example or show the jury an  
6 example of where there's high temperature yet it has -- the  
7 nighttime temperature has not dropped too low or very low.

8 A Well, beginning on the upper-left portion, you've got the  
9 -- the 10th and the 11th of that month at a high temperature of  
10 100 on the 10th, 105 on the 11th.

11 And, then, the other important thing to look over to the  
12 right, there's just a little dab of yellow there showing the  
13 peak gust and average wind speeds. And you can see that, you  
14 know, at 7.8, 7.2, with peak gusts at 22 and 30, it was a breezy  
15 day. And, so, that's going to really drive the stress factor  
16 for the plant.

17 Q What about -- as I show you here, on the 23rd and the 24th  
18 day, what can we gather from this information as we run it  
19 across?

20 A Well, those are the dog days of summer. The 23rd's 108,  
21 the 24th's 99 for a high. Your -- your low is -- is 70 degrees  
22 and 71. So you're -- you're quite a ways above, sort of, your  
23 desired mid 50s to lower 50s recovery temperature.

24 And, if you look at the wind speed, you have relatively  
25 high average winds -- 11.3, 10.8 -- and gusts at 36 and 37. At

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1 this stage of crop development, that's really damaging.

2 Q And the -- we heard information or testimony -- I guess,  
3 there's just -- I have just one more. At the -- at the end of  
4 the month, July 30th and 31st, these figures here (indicating),  
5 is that, I mean, the same kind of conditions that -- that cause  
6 stress to the potato plant?

7 A Yes.

8 Q And, then, apparently, that continues into August?

9 A Yes. I can't see August. It's --

10 Q Oh, I'm sorry. Let me see if I can get that to you.

11 A Yes. That's August, 2003. Correct.

12 Q And the -- here, again, we're showing temperatures of 104  
13 with nighttime temperatures of 67 and, then, 38 mile-an-hour  
14 wind gusts?

15 A Yeah, plus the average wind speed is, you know, at 9.5.  
16 That's -- for a 24-hour cycle, that's a lot of air movement.

17 MR. SMITH: Thank you, sir. I have no other  
18 questions.

19 THE COURT: Mr. Tornabene?

20 MR. TORNABENE: Your Honor.

21 THE COURT: You may proceed.

22

23 CROSS EXAMINATION

24 CROSS BY MR. TORNABENE:

25 Q Good afternoon, Mr. Turner.

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1 A Good afternoon, sir.

2 Q Mr. Turner, Mr. Bentley had asked you a little bit about  
3 your relationship to each of the defendants or most of the  
4 defendants. Just wanted to verify a little bit of that with  
5 you. You reference that you'd done some work over the years for  
6 Mr. Olsen and his various companies. Is that correct?

7 A Yes.

8 Q And when did you first start doing that?

9 A I believe it was 2001.

10 Q And this was in your capacity as a consulting agronomist?

11 A Yes.

12 Q And, in 2001, could you describe for us what -- what  
13 specific consulting were you doing for Mr. Olsen?

14 A He had a problem in one field.

15 Q What was that?

16 A It was a water-related problem.

17 Q Can you elaborate?

18 A Yeah. He was renting ground far north, actually, almost  
19 within sight of the town of Wilbur. It's really at the very  
20 northern edge of our potato production area. Those are deep  
21 well Odessa subaquifer irrigated areas. They're not in the  
22 Columbia Basin project. Water is a little scarce. And potatoes  
23 are a very water-intensive crop and require water on demand --

24 (Interruption by the reporter)

25 THE WITNESS: Water-intensive crop. And they -- when

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1 they need water, they got to have it.

2 And, apparently, what was going on is the landowner had  
3 rented the one circle to Mr. Olsen for potatoes but had crops on  
4 several other circles. And, when the sun went down and most of  
5 the Olsen employees left town to go down to Moses or Pasco, the  
6 water would get turned off the potatoes and would go on to the  
7 other crops. And, then, just before it would get light, the  
8 water would go back on the potatoes. And, so, the fieldmen  
9 would arrive and, well, the field's being irrigated but it's  
10 dry. What's wrong? So, with a little bit of work, we sort of  
11 sorted it out with the landowner and got an understanding that  
12 the water needs to be on. And, when the water needs to be on,  
13 that's what we pay for in the rent.

14 Q And, so, your role in that was in terms of -- as an  
15 agronomist was determining that there was an irrigation problem  
16 despite the fact that the observation was that, when people were  
17 there, the water was on.

18 A Yes. And I -- I followed up during harvest and monitored  
19 the -- the actual harvest, rode the digger, looked at the  
20 transloader to just -- you never know how much damage is done  
21 until the crop comes out of the ground. So there was never a  
22 claim presented. It just sort of satisfied myself that,  
23 although it was touch and go for a bit, pulled it back together  
24 at the end.

25 Q And, with regards to that consulting assistance that you

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1 did for Mr. Olsen in 2001, how much of your business was that in  
2 2001 would you estimate?

3 A Speaking about my forensic-type work?

4 Q Yes.

5 A 2001 it was probably 60, 70 percent.

6 Q Okay. And let's move forward then. Well, is that -- is  
7 that all the work that you did for Mr. Olsen in 2001?

8 A I believe so.

9 Q How about in 2002? Did you do any work for him?

10 A Yeah. It was -- he called me about something, and I went  
11 and looked at several of his fields. I think it was a disease  
12 issue, blight. Just sort of got busy with the applicator, got  
13 caught up, provided crop protectant materials, and the crop got  
14 straightened back up.

15 Q And how long did it take you to sort that 2002 issue out  
16 for Mr. Olsen?

17 A Very short time. Basically, one day in the field  
18 examining, talking on the phone, making a decision about the  
19 mixture of products to apply, and -- and, then, speaking to his  
20 field staff.

21 Q Any other consulting work for Mr. Olsen that year in 2002?

22 A No.

23 Q How about in 2003? Any work for Mr. Olsen then?

24 A I had a little problem in '03.

25 Q Okay. I'm sorry. Did -- who had a little problem?

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1 A Mr. Olsen did.

2 Q Okay. So -- and what -- what was the nature of your  
3 consulting arrangement with Mr. Olsen in 2003?

4 A Well, he called me out when the potato plants started to  
5 look funny.

6 Q Okay. And let's try it this way: In 2003, how much of  
7 your consulting business was devoted to work for Mr. Olsen?

8 A Probably one percent.

9 Q Okay. So this is another smaller job?

10 A Yes.

11 Q Okay. And of the same variety that you described in 2002?

12 A No.

13 Q Okay. Well, did it get sorted out?

14 A Well, I gave him the answer; but it wasn't the answer he  
15 wanted.

16 Q Okay. Did you still get paid?

17 A Yes.

18 Q How about in 2004? Any consulting work for Mr. Olsen then?

19 A I don't recall anything in '04.

20 Q Okay. And, moving forward, I know in 2006 it sounds like  
21 there's been more work since then for Mr. Olsen. How about 2005  
22 though?

23 A I don't think so in '05.

24 Q Okay. And you described a little bit that -- about 2006  
25 forward, I believe, is -- am I remembering that right? Is that



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1 work that you've been doing fairly consistent -- consistently  
2 for Mr. Olsen since 2006?

3 A Yeah, he leased four circles from one of my clients in  
4 2006.

5 Q And, so, the nature of the consulting work you've been  
6 doing in 2006 with Mr. Olsen has been what?

7 A Well, it's different because I'm not paid by Mr. Olsen.  
8 I'm paid by the landowner.

9 Q Okay.

10 A It's a package deal. You get me with the farm.

11 Q Okay. And, so, Mr. Olsen is the beneficiary of that.

12 A Yes.

13 Q And how much of your consulting business from 2006 forward  
14 has been devoted to that arrangement?

15 A Well, he didn't rent from us again until, I think, 2009.  
16 He's been on for four years since. He's currently there.

17 Q So, in 2006, how much of your consulting business,  
18 approximately, was devoted to the arrangement that you've  
19 described?

20 A What year?

21 Q 2006.

22 A In 2006, he just had those four circles. There's 31  
23 circles on that particular farm. So very small. Probably a  
24 percent, maybe less.

25 Q And how about your opportunities of your consulting

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1 business, though, for all of those landowners fields? How --

2 what was the percentage there in terms of your consulting --

3 A Well, that's significant. That's probably 15 percent.

4 Q Okay.

5 A The grower has 22,000 acres.

6 Q Now, with regards to Mr. Olsen and Olsen -- and I'm sorry.

7 I just to want clarify. Any other consulting for Olsen Ag,

8 Inc., that we haven't covered?

9 A Excluding this matter, none.

10 Q And you mentioned Mr. Peterson; that you'd done some

11 consulting work for him, I believe. Is that correct?

12 A I had a case he was involved in; but I can't remember his  
13 particular role, whether he was a grower or a landowner. It was  
14 a fumigation issue on potatoes.

15 Q And how about -- just for thoroughness, how about Poco,  
16 LLC? Any additional consulting work for them outside of this  
17 litigation?

18 A Some of the stuff I looked at in '03 was Poco.

19 Q Okay. That -- that you described earlier as part of your  
20 consulting for Mr. Olsen in '03?

21 A Yes.

22 Q Okay. And how about Mr. Gordon? What consulting have you  
23 done for him or one of his companies as an agronomist outside of  
24 this litigation?

25 A I had two prior potato cases. A seed issue in the late

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1 '80s. And, in the early '90s, a fertilizer company put on way  
2 too much of one particular fertilizer and burned a field up.

3 Q And you helped Mr. Gordon with that?

4 A I did.

5 Q And -- but this was back in the late '80s you mentioned.

6 Is that --

7 A Late '80s and, then, I think, '91 or '92 on the fertilizer  
8 issue.

9 Q Any other consulting work for Mr. Gordon or any of his  
10 companies outside of this litigation since then?

11 A None that I can recall.

12 Q And you were asked about Mr. Ackerman outside of, again,  
13 this litigation. Could you, please, describe the nature of your  
14 work with Mr. Ackerman.

15 A The agency that he worked for is a major writer locally or  
16 sales outlet for crop insurance. So, whenever I had a field  
17 that was damaged, if there was crop insurance on, we either had  
18 contact with Mr. Ackerman or some of his staff. One of the  
19 things that they do is they accumulate all of the information  
20 for the crop insurance. And it simplifies my life as a forensic  
21 guy to go in and just get a copy of their file because then I  
22 have the certified acres in the field, the planting dates, the  
23 variety. Everything's there for me and it's all in a -- in a --  
24 you know, nicely formatted.

25 Q Between 2001 and 2004, can you give us a general estimate

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1 of how many times you worked with Mr. Ackerman in that capacity  
2 that you've described?

3 A You know, I don't think I remember a specific time during  
4 '01 through '04 that I was in there; but I probably was. I'm  
5 not even sure I saw Mr. Ackerman. It might have just been  
6 staff.

7 Q I see. Okay. And how about Mr. Bennett? Have you ever  
8 done any consulting work for him?

9 A When he was employed by T16 in either the late '80s or  
10 early '90s, I did quite a bit of work for T16. It was a large  
11 irrigated circle farm near Lind.

12 Q Any other consulting work that brought you in contact with  
13 Mr. Bennett outside of this litigation?

14 A He's a partner in 3P Farming; and I do regularly work for  
15 one of the other partners, not for Mr. Bennett.

16 Q And is that work that you -- that consulting work, is that  
17 for 3P Farms?

18 A Yes.

19 Q And that regular consulting work -- let's just start with  
20 the period of 2001 to 2004. How much of your consulting  
21 business was that regular consulting work?

22 A I think I was out two of those years. Both of them were  
23 herbicide issues, damage to potatoes.

24 Q And were these smaller consulting issues of the kind you've  
25 described?

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1 A Yes. Typically, one, two-day job.

2 Q And, then, any consulting for Tri-Cities Produce?

3 A None.

4 Q Now, you were asked about a -- your professional  
5 relationship with the defendants. Do you know any of them  
6 personally outside of your professional interactions?

7 A None of the defendants are friends of mine. They're  
8 professional people that I deal with. They're pleasant, but  
9 they -- I don't -- you know, they don't -- we don't socialize.

10 Q Okay. And what -- what are your fees, typically, for being  
11 an agronomist consultant outside of litigation?

12 A Well, there's no distinction. My fees are the same.

13 Q Okay. And what are they?

14 A My standard fee schedule is \$130 an hour. I typically  
15 offer frequent flier discount. If you are a repeat grower, a  
16 repeat client, I'll discount it 10, 20, or \$30 an hour.

17 On the larger research projects that I've undertaken,  
18 particularly, the USCPA work, I'll often take a steeper discount  
19 than that because I'm going to get a huge block of hours.

20 Q And, so, does your fee -- in terms this litigation, does it  
21 include time on the stand as well as time in the courtroom  
22 observing testimony?

23 A It's door-to-door. When I leave my office to come here to  
24 when I get home, the clock's running. If I'm at -- in the  
25 office, I work out of my home. If I'm working on matters

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1 associated with this case, they're billed by the clock.

2 Q Now, you've testified here today that, at least as to  
3 Mr. Olsen, you believe he's, I believe the phrase was, a "top  
4 tier grower." Do you recall that?

5 A Yes.

6 Q And, by that, you mean that he's very good at potato  
7 farming. Is that correct?

8 A He is.

9 Q With regards to Mr. Peterson, would you also consider him a  
10 top tier grower?

11 A I spent less time in his fields, but I've seen the outcome.  
12 I've seen a lot of the packout sheets and the pay outs. And I  
13 would consider him also a top tier grower.

14 Q And just so I can be clear because we've heard testimony  
15 that Mr. Peterson grows onions. I'm speaking specifically with  
16 regards to potatoes for Mr. Peterson. Is -- is that what you  
17 understand?

18 A Yes.

19 Q Same answer?

20 A Yes.

21 Q And how about Mr. Gordon with regards to potatoes? Would  
22 you consider him a top tier grower?

23 A He was a very good grower. But, since my last contact with  
24 him was 20 years ago, I'd have a harder time answering that  
25 today. Twenty years ago he was definitely top tier.

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1 Q Okay. Any reason to believe that that's changed?

2 A No.

3 Q Now, you testified that, with regards to the achievability  
4 of the specific gravity, that you believe that is achievable. I  
5 believe it's with significant effort. Is that fair?

6 A You have to have, sort of, several elements. Significant  
7 effort. I believe I mentioned you have to have the cooperation  
8 of mother nature. You can't do this every year. But, if you  
9 have cooperative weather, good management, good site, I think  
10 it's an achievable goal.

11 Q So, even if you're a top tier grower with the specific  
12 gravity standards of these contracts, you're not going to  
13 achieve them every year. Is that correct?

14 A Not every field. Not every year.

15 Q And, if I understand your critique of the Western Regional  
16 Trial data in use in this litigation, it's that those fields are  
17 not -- by design, they're not specifically trying to achieve, in  
18 this instance, specific gravity considerably higher than the  
19 average potato grower. Is that a fair assessment?

20 A That -- that -- that's a fair assessment, yes.

21 Q Now, here in this case, you're aware, of course, that the  
22 significant effort that you're testifying to by these growers,  
23 top tier growers, resulted in rejection all four years of  
24 potatoes. Correct?

25 MR. SMITH: Objection, your Honor. Objection, your

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1 Honor. It's too general. Form of the question. Different --  
2 different growers in different years.

3 THE COURT: Yeah. Thank you. Sustained.

4 Q (BY MR. TORNABENE) Mr. Turner, with regards to Mr. Olsen,  
5 all the years that he entered into the contract acting as a top  
6 tier grower, nonetheless, he was not able to meet those  
7 standards, was he?

8 A Not in these years.

9 Q And, with regards to Mr. Peterson, top tier grower, the  
10 years that he entered into the contract, '03 and '04 through  
11 Poco, not able to meet these standards. Correct?

12 A I'd really like to refresh my memory. Do you have a  
13 summary of the grade sheets? The Ag World support sheets. I  
14 haven't looked at that data recently. I'm just hesitant to --  
15 to confirm you.

16 Q That's fair. Did you review the contracts at issue in this  
17 case? Correct?

18 A I did, yes.

19 Q And you reviewed the rejection letters. Correct?

20 A Yes.

21 Q And -- but yet, as you sit here right now, you're not sure  
22 whether or not the Poco fields did not pass the grade in those  
23 years?

24 A Well, the rejection letter could be either for grade or for  
25 bruise. My hesitation is I think there were instances where



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1 they made specific gravity but didn't make bruise or vice versa.

2 Q I see. I see.

3 A That's my hesitation.

4 Q I see. And, so, let me be clear. The contract doesn't  
5 really matter if you meet one grade and not the other. Correct?

6 A The way the contract's written, yes.

7 Q Same result either way.

8 A Yes.

9 Q So, with that in mind with regards to these contracts, top  
10 tier growers, speaking regarding Mr. Peterson in 2003, that was  
11 rejected, wasn't it?

12 A I believe so. But, again, the documents are in evidence.  
13 It's whatever they say.

14 Q Certainly. And, with regards to 2004, Mr. Peterson, acting  
15 as a top tier grower, we can assume with significant effort,  
16 also a rejection under the contract yet again. Correct?

17 A Yes.

18 Q And Mr. Gordon, presumably still a top tier grower, also  
19 under these contracts in 2003, rejected. Correct?

20 A Yes.

21 Q And, in 2004, still a top tier grower presumably, still  
22 with significant effort, rejected under the contract again.  
23 Correct?

24 A Yes.

25 Q When you --

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1 THE COURT: How are we doing on time for everybody?  
2 It's ten after 4:00. We've been at this an hour and ten  
3 minutes. I didn't know if -- we'll take a short break or not?

4 MR. TORNABENE: A short break would be fine, your  
5 Honor.

6 THE COURT: All right. Why don't we take a short  
7 break, get everybody up and moving so we can finish the day.  
8 Thank you.

9 (Jury out at 4:11 p.m.)

10 (Court recessed at 4:11 p.m.)

11 (Court reconvened at 4:22 p.m.)

12 THE COURT: Please, be seated. Okay. Are we ready to  
13 talk to me about tomorrow? What's going to happen tomorrow?  
14 Well, I'm told that you don't have enough witnesses to bring the  
15 jury in for tomorrow and you want to start Monday. Now, is  
16 somebody going to confirm that rumor --

17 MR. BENTLEY: That is --

18 THE COURT: -- or are you all being very circumspect  
19 about this?

20 MR. BENTLEY: We were all afraid --

21 THE COURT: Nobody wants to take the blame?

22 MR. BENTLEY: We were afraid we might not be able to  
23 persuade the Court to do that, but we would be very happy to do  
24 that. And we feel that the juror who's having a wedding would  
25 be very happy, too.

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1 THE COURT: Well, that all depends on what next week  
2 looks like. So tell me what you want to do. Who's in charge  
3 from the defense side for tomorrow? Okay. Mr. Marchi, do you  
4 have any witnesses tomorrow?

5 MR. MARCHI: No, your Honor, I don't.

6 THE COURT: Okay.

7 MR. MARCHI: And any witnesses that I'll have will be  
8 next week, if I have any.

9 THE COURT: Mr. Smith?

10 MR. SMITH: I -- I don't have any witnesses for  
11 tomorrow, your Honor.

12 THE COURT: Mr. Schwartz?

13 MR. SCHWARTZ: I have none, your Honor.

14 THE COURT: Okay. Mr. Johnston?

15 MR. JOHNSTON: No, your Honor.

16 THE COURT: Mr. Bentley?

17 MR. BENTLEY: No, your Honor.

18 THE COURT: Mr. Vovos?

19 MR. VOVOS: I can have one witness here, but I can  
20 bring him Monday just as easy. And I hate to convene the Court  
21 for one -- one witness that would be very short.

22 THE COURT: Well, here's my problem. There's the end  
23 portion of this case when we're going to spend a couple of hours  
24 talking about jury instructions. And I -- we can also  
25 anticipate there'll be more Rule 29 motions. So, that said,

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1 tell me what your week looks like and what you want to do  
2 because there'll be a day when I don't bring the jury back until  
3 1:00 for evidence next week because I want to make sure that, in  
4 advance of the end of your case, I have a complete set of jury  
5 instructions and a verdict form that I'm probably going to give  
6 at that point. So what day do you want to plan that meeting  
7 for?

8 MR. BENTLEY: Your Honor, Mr. Johnston reminds me that  
9 this one witness, who could be brought in tomorrow, Mr. Hirano,  
10 has a number of areas in his testimony and would not necessarily  
11 be as brief as most of the other witnesses that we might call.

12 MR. JOHNSTON: If Mr. Vovos has one witness --

13 THE COURT: Look, I've got a jury standing outside the  
14 door. What do you want to do?

15 MR. VOVOS: Mr. Hirano is the one witness that I have  
16 tomorrow -- that -- that you have. It would be your witness.

17 THE COURT: Is he going to take three hours, four  
18 hours?

19 MR. JOHNSTON: I don't think he'll take three or four  
20 hours, your Honor; but it'd probably be an hour and 45 minutes.

21 THE COURT: Well, how's your schedule for next week?

22 MR. JOHNSTON: Well, your Honor, we had planned to  
23 start on Monday. So we can try and find an additional witness  
24 for tomorrow. I'm not sure that we can do that, but I --  
25 Mr. Hirano, I think, can take up --

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1 THE COURT: Do we have objections to his exhibits or  
2 something of that nature?

3 MR. TORNABENE: We haven't seen them. I -- I know  
4 generally who he is. I don't think there'd be much issue to  
5 take up.

6 MR. JOHNSTON: I don't anticipate difficulty with  
7 witnesses (sic) with Mr. Hirano.

8 THE COURT: Okay. Well, let's just bring him because  
9 I don't see how this witness is going to be finished by tonight  
10 by 5:00.

11 MR. JOHNSTON: Okay.

12 THE COURT: Let's just bring the jury in; and, then,  
13 we'll see where we are at the end of the day. Okay.

14 (Jury in at 4:25 p.m.)

15 THE COURT: Please be seated. Thank you for your  
16 patience. Sorry we roused you unnecessarily. Let's resume and  
17 see where we go.

18 MR. TORNABENE: Thank you, your Honor.

19 Q (BY MR. TORNABENE) Mr. Turner, you testified on direct, I  
20 believe, with Mr. Bentley that in -- I believe, it was in 2002  
21 Mr. Olsen would have had difficulty changing the variety of  
22 potato. Do you recall that?

23 A Yes.

24 Q And -- and that was based on the -- the seed issues that  
25 you'd walked us through. Correct?

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1 A Correct.

2 Q Now, Mr. Olsen, January 1st, 2002 -- he, of course, did not  
3 have to enter into the same contract again, did he?

4 A No.

5 Q But he did.

6 A Yes.

7 Q Now, with regards to your testimony --

8 MR. BENTLEY: I'm going to object to that question and  
9 move to strike because Mr. Olsen's contract in '02 was not the  
10 same as the contract in '01.

11 THE COURT: I'll sustain that, and you can reask the  
12 question.

13 Q (BY MR. TORNABENE) In 2002, did he enter into a contract  
14 that was the same in all respects with the exception of, I  
15 believe, the specific gravity was 1.078?

16 A I believe that was the change that year.

17 Q And he entered into that contract again with Tri-Cities  
18 Produce. Correct?

19 A Yes.

20 Q And he entered into it again with the company that he had a  
21 one-third ownership in, Agri-Pack. Correct?

22 A Yes.

23 Q But, again, you're not saying that he was forced from prior  
24 commitments to enter into those contracts again, are you?

25 MR. BENTLEY: Objection. Foundation.

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1 THE COURT: Sustained.

2 Q (BY MR. TORNABENE) So, Mr. Turner, you testified on direct  
3 regarding your opinion of the term "process" in the potato  
4 industry. Do you recall that?

5 A I do.

6 Q Aren't you just putting the word "process" before  
7 everything that happens to a potato after it's taken out of the  
8 ground?

9 MR. SCHWARTZ: Objection to the form of the question  
10 as argumentative, your Honor.

11 THE COURT: Sustained.

12 Q (BY MR. TORNABENE) Is there -- based on your definition,  
13 is there a way to do anything with a potato other than leave it  
14 in the ground and not call it a process?

15 A Yes.

16 Q I -- let me ask you this: Your testimony was that the  
17 process of taking the tuber out of the ground and separating it  
18 from dirt and rock is a process in terms of how that is  
19 understood in the potato industry. Is that correct?

20 A That's the harvest process, yes.

21 Q So how is it that you could do anything with a potato other  
22 than leaving it in the ground and not call it a process under  
23 your definition?

24 A Well, there are two common uses where you don't do anything  
25 to the potato. The first is seed. They don't wash it, grade

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1 it, sort it. It's loaded bulk, handled right as it came out of  
2 the field into the seller, back into the truck, and to the  
3 seed-cutting shed.

4 The other use is feed. We direct feed these to dairy and  
5 beef cows, particularly, when prices are really low like they  
6 have been this last year. There's no processors. There's no  
7 change. It just comes direct from the field or direct down to  
8 the seller without any process at all.

9 Q So, with seed potatoes, they don't separate it from rock  
10 and dirt?

11 A No. They're just as they -- I mean, there's some  
12 separation with rock and dirt during the -- the harvest process.

13 Q Okay.

14 A But they're not otherwise handled. They're simply placed  
15 into storage; and, then, they're removed from storage, shipped  
16 in bulk, unchanged. They go to a seed house. There's changes  
17 that occur there.

18 Q Okay. And, so, separating rock -- rock and dirt -- under  
19 the definition that you're providing an opinion on, separating  
20 rock and dirt when it's fresh pack, that's a process. But any  
21 separation of rock and dirt for use for seeds, that's not a  
22 process.

23 A Every time you touch a potato you have the opportunity to  
24 separate rock and dirt. The photo I showed, for example, the  
25 harvest showed a ten-wheeler. Often, if we have fields that are



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1 a long distance from the delivery point, we, then, go to a  
2 corner of the field with that ten-wheeler. We transload with a  
3 piler into a semi. So there's an opportunity and there's  
4 usually two or three people picking out rocks and -- and dirt  
5 there. When they unload into the seller for storage, there's  
6 usually somebody doing that same thing there; but that's not a  
7 substantial multistep process. It's just taking advantage of an  
8 opportunity.

9 Q So, then, to summarize, in your opinion, everything other  
10 than seed potatoes and cattle feed is processing.

11 A Yes, in some form.

12 Q So, when somebody says, "Well, this is the processing  
13 market," that, for you, has no meaning other than it's not seed  
14 and it's not cattle feed. Correct?

15 A Well, again, on average, if we have a hundred trucks  
16 delivering to Tri-Cities Produce, which is principally a fresh  
17 process pack facility, depending on the quality of the lot, 15  
18 to 40 truckloads of that original hundred are going to come out  
19 of that shed. They're going to go to some other process for  
20 additional processing. So a delivery to a fresh process packer  
21 in all instances, every single shed I've ever been in, some of  
22 those go to process. Further process. Whether it's frozen,  
23 dehy, or other, they go to other process.

24 Q Mr. Turner, my question was: For you, using your  
25 definition, if somebody says, "the processing market," for you,

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1 that simply means, well, it's any market for a potato that isn't  
2 cattle feed or seed. Isn't that correct?

3 A Yeah. My -- my question is which process?

4 Q I believe we have the same question, Mr. Turner. My  
5 question is, under your opinion and your definition that you've  
6 testified to, isn't it true that, if somebody says to you  
7 "processing market," all that means is not seed potatoes, not  
8 cattle feed.

9 A Yes.

10 Q And you feel that's standard in the industry?

11 A That's the common usage of the people I deal with.

12 Q Mr. Turner, you testified that these contracts of the  
13 defendants, in your opinion, were designed to create a premium  
14 potato. Do you recall that?

15 A No. The contracts don't create anything except  
16 opportunity.

17 Q Okay. I'll rephrase. The contracts entered into by the  
18 defendants and the quality factors listed therein were designed  
19 to get a premium potato if it met the grades.

20 A They were setting requirements for premium potatoes under  
21 the contract terms.

22 Q So, under the contract terms, if they were met, then, in  
23 your opinion, you would have a premium potato. Is that correct?

24 A Well, those are only two of a number of important quality  
25 factors; but they're two of the important ones.

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1 Q So, under those contracts, then, you -- even if the grade  
2 was met, you wouldn't necessarily have a premium potato.

3 Correct?

4 A That is correct. You can have very what we call "rough  
5 potatoes" that have second growth, knobs, misshapen, under size,  
6 you know, internal defect, external defect, rot. But, if you  
7 have high specific gravity and low bruise, they would meet those  
8 two parameters. But I don't think anybody would reasonably call  
9 them high quality potatoes.

10 Q And is that because, in that contract, you don't have, for  
11 instance, USDA Grade No. 1 or No. 2? We're talking size issues.

12 A Right.

13 Q Is that fair?

14 A That's fair.

15 Q And, in the contract, we don't have fry color. Correct?

16 A That's correct.

17 Q And we don't have anything about sugars. Correct?

18 A Correct.

19 MR. TORNABENE: Nothing further. Thank you.

20 THE COURT: Okay. Is there any recross or redirect  
21 for this witness?

22 MR. BENTLEY: Yes, your Honor.

23 THE COURT: I do hope we can finish this witness by  
24 5:00.

25 / / / / /

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REDIRECT EXAMINATION

REDIRECT BY MR. BENTLEY:

Q Mr. Turner, you were asked about an issue in 2003 with -- where you consulted with Mr. Olsen. Do you -- on cross examination. Do you remember that?

A Yes.

Q And you testified that you made a recommendation, and Mr. Olsen did not accept that recommendation?

A That is correct.

Q Can you give us more of the details on that, please?

A Mr. Olsen was farming a number of units up in the bullocks sort of west of Basin City, would be the best sort of direction, that were contaminated with a very potent picolinic acid, a pyridine compound, sold under the trade name of Tordon. It's an oxonic growth regulating herbicide that's used to control really noxious weeds like Canada Thistle; and it's very effective also on things like Russian Olive, which are very hard to kill. Because it's a broadleaf specific material and the potato is highly sensitive to it to the fraction of a part per billion, it's a chemical that has to be used very carefully.

Two different federal agencies were spraying in the immediate proximity of an irrigation supply ditch we call an "intermediate." In other words, it's not the largest of the canals, but it's the next size down. And their spray inadvertently got into the irrigation water, which didn't cause

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1 any damage to a lot of the crops. They're just not sensitive to  
2 that herbicide. But it caused damage and significant symptoms  
3 to these potatoes. And the recommendation I made was that he  
4 retain an attorney and -- and attempt to recover his damages.  
5 And he elected not to.

6 Q Now, you were asked on cross examination questions  
7 suggesting that the growers had done the same thing every year  
8 after year. Do you remember that?

9 A Yes.

10 Q Is it your understanding that these growers, Mr. Olsen,  
11 Peterson, and -- and Gordon -- first of all, with Mr. Olsen, you  
12 understand that he was farming potatoes four years in a row  
13 under this -- under a contract with Tri-Cities Produce.  
14 Correct?

15 A Yes.

16 Q And the first two years with another company, Agri-Pack.  
17 Correct?

18 A Yes.

19 Q Mr. Peterson and Mr. Gordon were farming only '03 and '04,  
20 pursuant to contracts with Tri-Cities Produce. Is that correct?

21 A Yes, that's correct.

22 Q And do you understand that Mr. Peterson, that is, Poco,  
23 farmed exactly the same varieties in '04 as it had in '03?

24 A I'd have to refer to the records to be certain.

25 Q Okay. I'm going to show you --

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1 MR. BENTLEY: This is for -- not for the jury.

2 Q (BY MR. BENTLEY) -- two documents. Exhibits 2011 and  
3 2012. Can you see those documents, Mr. Turner?

4 A Yes.

5 Q Do they show that Mr. -- that Poco was farming different  
6 varieties in '04 than it had farmed in '03 in many respects?

7 A Yes. There's a market shift.

8 Q And it's a shift to -- to fewer acres of Norkotah and  
9 more -- more acres of Westerns?

10 A Yes.

11 Q Okay. And I'm showing you Exhibit 1707. Does this appear  
12 to be a four-year analysis of Mr. Olsen's crops, variety by  
13 variety, in terms of number of acres in each variety?

14 A Yes.

15 Q And does it appear that the -- he principally farmed  
16 Norkotahs in '01 and '02 and, then, stopped entirely in '03?

17 A That's correct.

18 Q And, then, he went --

19 MR. TORNABENE: I object, your Honor. It misstates  
20 the exhibit, which I don't even believe is in evidence.

21 THE COURT: Say that again, please.

22 MR. TORNABENE: It misstates the exhibit, and I'm not  
23 clear as to whether or not this is in evidence yet we're having  
24 the witness read off of it.

25 THE COURT: Yeah. I don't know how you're going to

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1 get this in through this witness because he doesn't know  
2 anything about it.

3 MR. BENTLEY: Subject to connection; but I'll move on,  
4 your Honor.

5 Q (BY MR. BENTLEY) Now, you testified with respect to the  
6 differences between the '01 and '02 contract that Olsen, as an  
7 individual, had with Tri-Cities Produce in '01 and the contract  
8 that Olsen Ag, Inc., had in '02. Do you remember that?

9 A Yes.

10 Q And you testified that the specific gravity requirement had  
11 been reduced from 1.079 to 1.078.

12 A Yes.

13 Q Correct? Now, I'd like to show you a page from Exhibit 90,  
14 which is the '02 contract --

15 THE COURT: Previously --

16 Q (BY MR. BENTLEY) -- referring to --

17 MR. BENTLEY: In evidence. Previously admitted into  
18 evidence and this may be displayed to the jury with the Bates  
19 No. 80202.

20 Q (BY MR. BENTLEY) And, referring you to Paragraph 12 toward  
21 the bottom of the page, the "Refusal Clause," Subsection c. of  
22 12, what does that indicate the bruise free requirement was?

23 A 85 percent.

24 Q And how did that compare with the bruise free requirement  
25 in the '01 contract, if you recall?

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1 A It's five percent lower, I believe.

2 Q Okay. So both the specific gravity and the bruise free  
3 were reduced by comparison of the '02 contract to the -- the  
4 standards in the '01 contract were reduced -- both of those  
5 standards were reduced in the '02 contract.

6 A Yes.

7 Q You understand that potatoes are a rotational crop.  
8 Correct?

9 A Normally, yes.

10 Q And, with these particular growers, they rotated and rented  
11 land in different fields for each year. Correct?

12 A That's the common practice, yes.

13 Q And isn't the result that you can expect somewhat dependent  
14 upon the location that you're farming?

15 A Depends on the location, the conditions of the location,  
16 and what the prior management and prior cropping history has  
17 been.

18 Q Finally, Mr. Turner, were there advantages to these  
19 contracts that would induce a grower to sign them? Despite the  
20 quality standards?

21 A I think my answer is -- is situational and specific. Given  
22 the financial, sort of, stress created by the disaster in 2000,  
23 the necessity to have a safety net -- because one more is going  
24 to take you right off the board. You're going to be out of the  
25 business. I would be highly motivated to really give close



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1 consideration to these contracts. I think the greatest  
2 reservations I have with them really aren't on the grower side.  
3 It's actually over on the processor side.

4 MR. BENTLEY: Thank you.

5 THE COURT: Any other defense? Mr. Smith?

6

7 RECROSS EXAMINATION

8 RECROSS BY MR. SMITH:

9 Q Mr. Turner, let me ask you some questions somewhat specific  
10 to Mr. Gordon. The -- do you know what variety of potato  
11 Mr. Gordon grew or what varieties Mr. Gordon grew in 2003?

12 A No, not without referring to the records.

13 Q Do you know if he changed varieties in 2004?

14 A I can't recall without specifically refreshing my memory  
15 with records.

16 Q The evidence that we've heard is that he -- or that's  
17 introduced here is that, in 2003, he grew Norkotahs; and he grew  
18 Reds and Yukons. And you spoke about Reds and Yukons a little  
19 bit?

20 A Yes. I recall that now, yes.

21 Q Do we -- or can you -- do you characterize, in your  
22 business, Reds and Yukons as a -- is it fair to say they're,  
23 like, a specialty potato?

24 A They are.

25 Q And, in -- in that regard, I think you talked about it a

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1 little bit. Can a grower expect to -- in general, to obtain a  
2 higher value for those potatoes?

3 A You have to because the yield numbers are usually much  
4 lower.

5 Q All right. The -- with regard to achieving certain  
6 standards, I'm showing you what's been admitted in evidence as  
7 4194B.

8 MR. SMITH: And this can be shown to the jury. Will  
9 you check on me, Ms. Brasel, so I don't -- thank you.

10 THE COURTROOM DEPUTY: It is.

11 Q (BY MR. SMITH) Do you recognize this type of a document?

12 A Yeah. This is a Simplot Contract Inspection Grade Sheet.

13 Q And, in -- in this particular grade sheet, I want to direct  
14 your attention to this (indicating). It's a field number. Is  
15 that correct?

16 A Yes.

17 Q And, then, when -- when -- on these, when they talk about  
18 "Delivered Weight," is that the weight of the sample?

19 A Yes. The processors have forklifts and bins. So normal  
20 sampling is in 50-pound sacks, but they take larger samples  
21 because they have forklifts and bins.

22 Q So that -- that sample would be 500 pounds?

23 A Yes.

24 Q All right. And, then, I know this is old and it's hard to  
25 read; but can you tell me what the specific gravities that were

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1 measured on that field are according to this report?

2 A Well, you can see it's broken out by size range; but the  
3 average is 1.080.

4 Q And, then, I want to show you what's been identified and  
5 previously admitted as 4194A. And, again -- oh, excuse me. Let  
6 me go back for just a second. Does it -- does it indicate a  
7 inspection date and time on this report?

8 A Yes.

9 Q And I know we can all read it, but that's September 23rd of  
10 2004?

11 A Yes.

12 Q All right. And, then, let me show you here Defendant's  
13 Exhibit 4194A. And, also, if I just run through the report with  
14 you, it shows, again, an inspection date of September 23rd?

15 A Yes.

16 Q The field number is different. It's 8404?

17 A Correct.

18 Q And the delivered weight is 500 pounds?

19 A Right.

20 Q All right. And, then, in this particular sample, the  
21 specific gravities were identified as what, please?

22 A 1.081.

23 Q What -- what is this when they run -- when the report runs  
24 this down -- because it starts out it says, "Average 1.082." Is  
25 that identified as to size? Or how -- why does it go 1.82 (sic)

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1 and, then, have the final figure of 1.081?

2 A Typically, if you go to the left side of the column, the  
3 header is "Size" and, then, it goes "4 OZ," "6 OZ," "10 OZ,"  
4 et cetera; and you just follow the data over to the right. The  
5 raw data's there for weight in air, weight in water, difference,  
6 and, then, the calculated specific gravity.

7 Q So are we saying that there was -- that there was -- you  
8 know, they -- they tested specific gravity for different sizes  
9 of the potato? Is that what you're saying?

10 A That is correct.

11 Q All right. And -- and, with regard to that, the -- the  
12 specific gravities were even higher for certain sizes.

13 A That's typical.

14 Q All right. You -- are you aware of whether or not  
15 Mr. Gordon's field location changed from crop year 2003 to 2004?

16 A I don't know the specifics, but I would expect because of  
17 rotational issues it would.

18 Q Okay. Regardless of other issues --

19 A Right.

20 Q -- you have to rotate. All right.

21 MR. SMITH: Okay. Very good, sir. I have no other  
22 questions.

23 THE COURT: Mr. Vovos?

24 / / / / /

25 / / / / /

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RECROSS EXAMINATION

1  
2 RECROSS BY MR. VOVOS:

3 Q Good afternoon, sir.

4 A Good afternoon.

5 Q I have a couple questions. I was listening when  
6 Mr. Bentley was talking to you. And you said you had  
7 reservations as far as these contracts and after the year 2000  
8 and the catastrophe that happened in 2001, but your reservations  
9 were more from the processor side. And I wanted to know -- I  
10 guess I'd just ask you. What did you mean by that? Was there a  
11 concern about the processors entering into these contracts?  
12 About the purchase or about the purchaser?

13 A Let me break that answer out sort of by year. A disaster  
14 situation where the U.S. Government actually stepped in and  
15 tried to help the market at the end in 2000. That's what's on  
16 your mind when you're thinking about forming this 2001 contract?

17 Q Yes.

18 A You got that guaranteed minimum price in there. You're  
19 basically taking possession of the -- title to them under the  
20 contract on delivery whether it goes to storage or -- you know.  
21 And, after harvest, whether or not they are accepted and meet  
22 all the specifications or the rejected and the contract minimum  
23 is paid, either way you're going to be on the hook for the  
24 storage.

25 Q Are you talking about the purchaser?

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1 A I'm talking about, in this case, the contractor, Tri-Cities  
2 Produce.

3 Q Yes.

4 A So, coming out of the gates with this fresh searing memory  
5 of 2000, you need to swallow hard to kind of lay that out that  
6 you're going to assume all of that on the front end.

7 Q All right.

8 A Then you get into 2001 and it kind of reverses. The market  
9 goes up and you start thinking rosy thoughts, but you sign a  
10 similar contract with some changed terms. In 2003 and '4, the  
11 market slides and goes back down again. So the risk factor --  
12 and I think the testimony earlier was that they actually lost  
13 money --

14 Q Yeah.

15 A -- over the long run. So, I guess my feeling about risk is  
16 borne out by the history of the finances.

17 Q You were present when Mr. Carr testified or were you? It  
18 was an owner of Agri-Pack.

19 A I was.

20 Q He expressed the same concern about signing a contract.

21 A Yeah. That's why he didn't go that direction after his  
22 first couple of years.

23 Q I want to change subjects, and I want to talk to you about  
24 this definition of processing. What are processed grade  
25 potatoes in the industry, in the standard, when you talk about

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1 "processing grade"? Is there a certain type of potato, when you  
2 talk about 1's and 2's and, then, processing grades that go to  
3 dehy makers that -- that is a term that's used for describing  
4 potatoes?

5 A It is a particular term. It describes a particular type of  
6 potato.

7 Q Explain that to the jury. What is processing grade  
8 potatoes?

9 A It's a really nice way to say that, on average, these are  
10 potatoes that went through a process fresh pack facility and  
11 were knocked out somewhere in the process. They were graded out  
12 for defects, size, whether it was internal/external rot,  
13 excessive dirt. Whatever it was, they got knocked out of U.S.  
14 No. 1 or U.S. No. 2. So now we call them "process grade," and  
15 they go to a different processor.

16 Q Okay. Is that a term that's used in the industry?

17 A Yes.

18 MR. VOVOS: Thank you, Mr. Turner.

19 THE COURT: Anyone else on the defense side? Okay.  
20 Recross.

21

22 RECROSS EXAMINATION

23 RECROSS BY MR. TORNABENE:

24 Q Mr. Bentley asked you about some documents that he put  
25 before you. Do you recall that?

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1 A Yes.

2 Q And, without getting further into those, I guess my  
3 question is, with regards to -- what was -- take a step back.  
4 Strike that.

5 If you have records of the different seeds that are  
6 purchased by a grower, all the different kinds of seeds, you  
7 would know what seeds they purchased. Correct?

8 A Assuming you have a complete set of records, yes.

9 Q You're not going to know from that accounting what they  
10 grew, necessarily, are you?

11 A I don't know anybody that's bought seed potatoes at a very  
12 high price and dumped them unless there was a defect with them.

13 Q You're not going to know from just the seed records what  
14 they grew. Isn't that accurate?

15 A Well, you can't grow potatoes without seed.

16 Q I understand that. From the seed records -- so, you're  
17 saying, from the seed records alone, you know what the grower's  
18 going to grow.

19 A It's a highly reliable indicator, yeah.

20 Q All right. Do you also know what contract, what is  
21 ultimately grown, will be transferred or will be utilized for  
22 transferring those potatoes?

23 A It depends on whether all of your potatoes are contracted.

24 Q So, if -- the contracts we're dealing with here, they don't  
25 specify a variety. Correct?



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1 A No.

2 Q So, looking at the contract for, say, Poco, 2003, and their  
3 seed records for 2003, you would need more information to know  
4 what was ultimately transferred under that contract, wouldn't  
5 you?

6 A You'd need more information, yes.

7 Q And would that information include the packout sheets that  
8 are associated with the fresh packer to that contract?

9 A It depends.

10 Q That -- that wouldn't be good information?

11 A Well, it's not that it's bad information it just might be  
12 misleading. In a situation like Tri-Cities Produce with their  
13 Famous system and the DOS version the first few years and the  
14 default coding everything to Norkotah, you could be mislead if  
15 you didn't get all of the information.

16 Q If -- if that information wasn't provided to you, you could  
17 be mislead.

18 A Well -- or if you didn't seek it out. Either way, yes.

19 Q So, if that's what was provided to, say, an insurance  
20 company, they might be mislead.

21 A Depends on whether they asked for it.

22 MR. BENTLEY: I'm going to object to that. It assumes  
23 a fact not in evidence.

24 THE COURT: Overruled.

25 Q (BY MR. TORNABENE) Mr. Turner, you would agree that

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1 Colorado 3s are a -- I believe, it's a strain of Norkotahs. Is  
2 that correct?

3 A They are.

4 Q So, if records indicated that a grower stopped growing  
5 Norkotahs, standard Norkotahs, and, instead, grew Colorado 3s,  
6 they would still be growing a strain of Norkotahs. Correct?

7 MR. SCHWARTZ: I object, your Honor. This is beyond  
8 the scope.

9 THE COURT: I'm going to permit some latitude here.  
10 The nature and extent of the redirect was significant. So I'm  
11 going to permit this. Go ahead.

12 THE WITNESS: Could I have the question again, please?

13 Q (BY MR. TORNABENE) If a grower stopped growing standard  
14 Norkotahs one year and, instead, grew Colorado 3s, they would  
15 still, nonetheless, be growing a strain of Norkotahs. Correct?

16 A Yes.

17 MR. TORNABENE: Nothing further. Thank you.

18 THE COURT: Have we finished with this witness?

19 MR. VOVOS: We have nothing I don't think, Judge.

20 MR. JOHNSTON: No questions, your Honor.

21 MR. BENTLEY: No questions.

22 THE COURT: Well, Mr. Turner, you may step down.  
23 Thank you.

24 THE WITNESS: Thank you.

25 THE COURT: Ladies and gentlemen, I'm going to ask you

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1 to step out and just stay for a few minutes. We're going to try  
2 to sort out tomorrow and see where we are and, then, Monday. So  
3 give us a few minutes so we can tell you what your report time  
4 is at some point. Thank you.

5 (Jury out at 4:58 p.m.)

6 THE COURT: Please be seated. By my calculations,  
7 if -- if, for some reason, we should end up at the end of  
8 evidence sometime next week, my estimate is that it's unlikely  
9 that we could actually complete closings in less than two full  
10 days. I don't see how that's possible. So that -- that tells  
11 you what your week looks like next week. If you think you're  
12 getting to get jury next week, then, I assume you've got  
13 virtually nothing to put on for next week. If you have evidence  
14 for Monday -- if you have a single day of evidence, it's  
15 certainly doable. But, if you have more than a single day of  
16 evidence, then you're right at the edge of spilling into the  
17 week after. So I think you need to be realistic about the --  
18 the extent of the testimony you expect so that I can tell the  
19 jury right now "Don't come in tomorrow" or "Come in tomorrow."  
20 So tell me what you want to do.

21 MR. JOHNSTON: Your Honor, I think that we had planned  
22 our witnesses on Monday and Tuesday for what would take about  
23 two days. And --

24 THE COURT: Who's "we"?

25 MR. JOHNSTON: That's Poco, your Honor. And we are --

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1 have contacted two witnesses, that were scheduled, to try and  
2 move them up to tomorrow. I think we -- we can get one  
3 additional to Mr. Hirano, and we'll try and fill the day. But I  
4 -- I don't want to get -- I mean, I think next week is pretty  
5 full and will take us to Thursday at some time.

6 THE COURT: For evidence.

7 MR. JOHNSTON: For evidence. That would be --

8 THE COURT: Yeah. See, we're going into the week  
9 after without any question.

10 MR. JOHNSTON: I think that's accurate, your Honor.

11 THE COURT: Well, then, let's work tomorrow. I'm  
12 going to be here all afternoon with a whole docket and other  
13 things. So it's not -- and no -- and none of you are going to  
14 be taking a day off either as I well know. So that said --

15 MR. JOHNSTON: And, your Honor, we will have  
16 Mr. Hirano. We believe that we may have Mr. Dave Long.

17 THE COURT: Okay.

18 MR. JOHNSTON: If I can have, maybe, an extra hour or  
19 so to identify our witnesses to, recognizing the issue, to you.  
20 We'll do it as quickly --

21 THE COURT: Sure. Ms. Brasel, tell the jury they can  
22 go home.

23 THE COURTROOM DEPUTY: Okay. And what time do you  
24 think?

25 THE COURT: 8:30.

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1 MR. BENTLEY: And, your Honor, is that juror with the  
2 dental appointment having that tomorrow? Does that affect our  
3 court time?

4 THE COURT: Yes. 7:00 tomorrow. That's his  
5 appointment. So we'll await his arrival. Well, why don't you  
6 tell them 9:00. Why don't we just come in at 9:00 and give them  
7 a little break. Okay. 9:00. Thanks.

8 All right. Folks, we know what our witnesses are for  
9 tomorrow. Excuse me, Mr. Peterson, have a seat. What -- what  
10 are we going do tomorrow, then?

11 MR. JOHNSTON: Your Honor, Mr. Peterson was just  
12 trying to advise us that there may be an available third  
13 witness; and we'll know that in about ten minutes. But I think  
14 we can fill the day tomorrow.

15 THE COURT: 9:00 to noon. That's what we're doing  
16 because I have a full afternoon and my staff needs lunch. So  
17 we'll be concluding at noontime.

18 Anything else we need to take up? Issues that need to be  
19 researching? Other issues? Okay.

20 What I'll try to do is to get a set of jury instructions to  
21 you sometime Monday, maybe Tuesday. But, since we're not doing  
22 it until the next week, I don't feel significant pleasure. But  
23 I will build in some time next week, depending upon that, at  
24 least a couple of hours on jury instructions some morning. So  
25 it may be that that will all have to happen Friday morning

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1 without the jury, and they'll get a four-day weekend. So you  
2 might want to think tentatively about being together Friday  
3 morning to do jury instructions based on the working set that  
4 I'm giving you so that you'll have something to take home over  
5 the weekend, you can take a look at, and including your  
6 arguments. At least, that's the tentative plan subject to some  
7 adjustment.

8 Anything else before we conclude? Okay, folks, see you at  
9 9:00 tomorrow. Thanks.

10 (Court recessed at 5:03 p.m.)  
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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ADMITTED</u>
1033	Letter from John Sheeley of American Growers Insurance Company (In Rehabilitation) to Lynn Olsen dated December 19, 2003, informing Olsen that AGIC has reviewed his AGR claim and has concluded that his approved revenue should be reduced because he overvalued his onion crop and therefore he does not have a claim [Court Bates 6731-34]	17
1037	"American Arbitration Association, Commercial Arbitration Rules, Demand for Arbitration" filed on behalf of Olsen d/b/a Olsen Agriprises, dated August 30, 2004, versus American Growers Insurance Co., seeking arbitration pursuant to the AGR policy with respect to both 2001 and 2002 issues [Court Bates 6711-12]	70 & 72
1046	Letter from Clifton parker to John Schultz dated April 5, 2007, explaining that after a re-evaluation of its earlier position, RMA has still concluded that Olsen did not have an AGR claim for the 2001 crop year [Court Bates 268-88]	29
1102	Letter from John Sheeley of American Growers Insurance Company (In Rehabilitation) to Debbie Moore of Olsen Ag, Inc., dated January 8, 2004, informing Moore that AGIC has determined that Olsen Ag, Inc., does not have a claim under its AGR policy for the 2002 year because its expected income from potatoes has been determined to be more than 83.35% of the total expected allowable income [Court Bates 6744-45]	21
1109	Letter from Clifton Parker, RMA's Assistant Deputy Administrator for Insurance Services, to John Schultz, attorney for Olsen, dated April 5, 2007, stating that, after a review of the file, revenue-to-count exceeded the guaranteed revenue and thus no indemnity is due [Six-digit Bates 000004-28; Exhibit 5 to the original expert report of Stu Turner]	33



1	<b><u>EXHIBIT INDEX (continued)</u></b>		
2	<b><u>NO.</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>ADMITTED</u></b>
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## C E R T I F I C A T E

I, RONELLE F. CORBEY, do hereby certify:

That I am an Official Court Reporter for the United States District Court for the Eastern District of Washington in Spokane, Washington;

That the foregoing proceedings were taken on the date and at the time and place as shown on the first page hereto; and

That the foregoing proceedings are a full, true and accurate transcription of the requested proceedings, duly transcribed by me or under my direction.

I do further certify that I am not a relative of, employee of, or counsel for any of said parties, or otherwise interested in the event of said proceedings.

DATED this 9th day of March, 2015.

/s/ Ronelle F. Corbey

RONELLE F. CORBEY, RPR, CSR, CRR  
Official Court Reporter for the  
U.S. District Court in  
Spokane County, Washington